Supreme Court, U.S.
FILED

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No. OFFICE OF THE CLERK

UNITED STATES SUPREME COURT

October, 1996

CAMILLE FJETLAND and EARTH ENTERPRISES, INC., dba PORTSIDE RECYCLING

PETITIONERS

vs.

LONE STAR NORTHWEST; GEOFFREY CROSS, and the Marital Community of GEOFFREY CROSS and JANE DOE CROSS; BOBBY J. DELAVERGNE, and the Marital Community of BOBBY DELAVERGNE and JANE DOE DELAVERGNE; TUCCI & SONS, INC.; G. PAREN WALKER and the Marital Community of G. PAREN WALKER and JANE DOE WALKER; AND JAMES M. MARSHALL, and the Marital Community of JAMES M. MARSHALL AND JANE DOE MARSHALL, and MARINE VIEW RECYCLING, INC.

RESPONDENTS

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEAL FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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135 pp

QUESTIONS PRESENTED FOR REVIEW.

1. Where federal subject matter jurisdiction exists, can the federal courts impose 50 separate, distinct, and perhaps even conflicting, state legislative and judicial standards relating to local guardianship proceedings and summarily deprive a plaintiff individual, against whom such proceedings have been brought, from standing to sue pursuant to Federal Rule of Civil Procedure 17 merely because of the pendency of those local proceedings an the fact that plaintiff is not represented by a guardian or guardian ad litem or otherwise has prior approval in the state court guardianship proceedings?

2. Where federal subject matter jurisdiction exists, can the federal courts impose 50 separate, distinct, and perhaps even conflicting, state legislative and judicial standards relating to local guardianship proceedings and summarily deprive a plaintiff individual, against whom such proceedings have been brought, from standing to sue pursuant to Federal Rule of Civil Procedure 17, merely because of the pendency of those local proceedings an the fact that plaintiff is not represented by a guardian or guardian ad litem or otherwise has prior approval in the state court guardianship proceedings, without violating the Americans With Disabilities Act of 1990, 42 U.S.C.A. §12101 *et seq.*.?

3. Where federal subject matter jurisdiction exists, can the federal courts impose 50 separate, distinct, and perhaps even conflicting, state legislative and judicial standards relating to local guardianship proceedings and summarily deprive a plaintiff individual, against whom such proceedings have been brought, from standing to sue pursuant to Federal Rule of Civil Procedure 17 merely because of the pendency of those local proceedings an the fact that plaintiff is not represented by a guardian or guardian ad litem or otherwise has prior approval in the state court guardianship proceedings to sue in federal court without violating Article III sections 1 and 2 of the United States Constitution?

4. Where federal subject matter jurisdiction exists, can the federal courts impose 50 separate, distinct, and perhaps even conflicting, state legislative and judicial standards relating to local guardianship proceedings and summarily deprive a plaintiff individual, against whom such proceedings have been brought, from standing to sue

pursuant to Federal Rule of Civil Procedure 17 merely because of the pendency of those local proceedings an the fact that plaintiff is not represented by a guardian or guardian ad litem or otherwise has prior approval in the state court guardianship proceedings to sue in federal court without violating the Fourteenth Amendment of the United States Constitution?

5. Where federal subject matter jurisdiction exists, can the federal courts impose 50 separate, distinct, and perhaps even conflicting, state legislative and judicial standards relating to local guardianship proceedings and summarily deprive a plaintiff corporation, otherwise in good standing and not a party to the guardianship proceedings, of standing to sue in federal court pursuant to Federal Rule of Civil Procedure 17 merely because of the majority stockholder in that corporation is the subject of inquiry in the guardianship proceedings, and the corporation is not represented by a guardian or guardian ad litem or otherwise has prior approval in the state court guardianship proceedings to sue in federal court.

6. Where federal subject matter jurisdiction exists, can the federal courts impose 50 separate, distinct, and perhaps even conflicting, state legislative and judicial standards relating to local guardianship proceedings and summarily deprive a plaintiff corporation, otherwise in good standing and not a party to the guardianship proceedings, of standing to sue in federal court pursuant to Federal Rule of Civil Procedure 17 merely because of the majority stockholder in that corporation is the subject of inquiry in the guardianship proceedings, and the corporation is not represented by a guardian or guardian ad litem or otherwise has prior approval in the state court guardianship proceedings to sue in federal court, without violating Article III sections 1 and 2 of the United States Constitution?

7. Where federal subject matter jurisdiction exists, can the federal courts impose 50 separate, distinct, and perhaps even conflicting, state legislative and judicial standards relating to local guardianship proceedings and summarily deprive a plaintiff corporation, otherwise in good standing and not a party to the guardianship proceedings, of standing to sue in federal court pursuant to Federal Rule of Civil Procedure 17 merely because of the majority stockholder in that corporation is the subject of inquiry in the guardianship proceedings,

and the corporation is not represented by a guardian or guardian ad litem or otherwise has prior approval in the state court guardianship proceedings to sue in federal court, without violating the Fourteenth Amendment of the United States Constitution?

8. Can a state statute deprive any person of any of their civil rights merely through the filing of a petition for the appointment of a guardian without appropriate notice and the opportunity to be heard on the issues involved therein without violating the due process and equal protections clauses of the Fourteen Amendment to the United States Constitution?

9. Is it proper to apply Federal Rule of Civil Procedure 11 sanctions to an attorney who brought the actions herein to fine him approximately $50,000 for bringing those actions, and arguing in a motion for reconsideration that there was no reason for the federal court to conclude that the individual plaintiff was not competent to act on her own behalf, after the court summarily ruled that the case would be dismissed unless the petitioners could show that state court guardianship proceedings had been dismissed prior to filing the federal cases, when the his argument was based on recent sworn expert psychiatric testimony on competency, of record in the case, and the fact that the guardian from the original proceedings, who was a defendant in the federal case, had been suspended and that a new petition and investigation of competency had been ordered by the state court because even the state court recognized there were clear improprieties in the supposed initial hearing?

10. Did the district court exceed its authority when it ruled, after dismissing the case without prejudice that the entire complaint was frivolous and that no action could lie against Commissioner Marshall based on allegations in the pleadings and facts that could be drawn in support of those allegations?

11. If the district court did not exceed its authority in ruling on the substance of the case against Commissioner Marshall, was it never-the-less in error in ruling that absolute immunity would have protected him under the facts in the record that were and could have been considered by the court.

12. If the district court did not exceed its authority in ruling on the substance of the case against Commissioner Marshall, was it never-

the-less in violation of Article 1 §9 of the United States Constitution prohibiting the United States from granting and Titles of Nobility in finding that he had absolute immunity from this action.

CORPORATE AFFILIATES

None.

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CITATIONS TO PRIOR REPORTS

We are unaware of any official or unofficial reports of prior proceedings or orders entered in this case by any courts or administrative agencies.

JURISDICTIONAL GROUNDS FOR REVIEW

Jurisdiction is based upon 28 U.S.C.§ 1254(1) in that this is a petition after rendition of a judgment or decree of the Court of Appeals for the Ninth Circuit. The Court of Appeals rendered its opinion and order on October 23, 1996 and filed its order denying rehearing on December 27, 1996. Copies of the orders and unpublished opinions are to be found in the Appendix.

28 U.S.C. § 2403(b) may apply. No court defined by 28 U.S.C. § 451 has certified to the Attorney General of the State of Washington that the constitutionality of a statute, 11 RCW Chapter 88, might be drawn into question.

CITATIONS OF AUTHORITY INVOLVED IN CASE

United States Constitution Art. 1 §9(8), Art III §§ 1, 2, and the 14th Amendment §1, 15 U.S.C. § 15, 18 U.S.C. § 1964(c), 42 U.S.C. § 1983, 42 U.S.C.A. §12101, Fed. R. Civ. P. 11, Fed R. Civ. P. 17, Washington State Constitution Art. 4 § 23, RCW 2.32.050, Chapter 11 RCW 88 §§ .005, .010(1), .010(a) (b) (c), .010(5), .030(1)(I), .030(4), .040, .045(1)(a), .045(1)(b), .045(3), (4), (5), .090(7), (9), and .095(1), RCW 11.92.060(5), RCW 23B.03.020(2)(a), Washington Superior Court Civil Rule 80(I), Ariz. Rev. Stat §§14-5101, 14-5304, Cal. Prob. Code §§ 810, 811, 812, 813, 1820, and 1821, Ind. Code 29-3-1-§ 7.5, Indiana Code 29-3-5-§ 1, Mo. Rev. Stat. §§ 475.010, and 475.030.

STATEMENT OF CASE

Subject Matter Jurisdiction in District Court:

Antitrust allegation of complaint, unlawful restraint of trade and conspiracy: 15 U.S.C.A. §15 grants exclusive subject matter jurisdiction to the United States District Court for private actions under 15 U.S.C.A. §1.

Civil Rights allegations of complaint, denial of equal

protection and due process allegations including conspiracy: Subject matter jurisdiction is in the United States District Court over actions under 42 U.S.C.A. §§1983 and 1985.

RICO conspiracy allegations relating to the taking of the various properties: Claims are also asserted under 18 U.S.C. §1962 where the district court has concurrent jurisdiction.

Pendente Jurisdiction over related malpractice and breach of fiduciary relations actions against former attorney and suspended guardian: The District court has pendente jurisdiction over the facts of this case to address any state claims because the case arises under the Constitution, and laws of the United States and the relation between the federal claims and the state claims permits the conclusion that these are related and in fact one case under the facts so presented.

Facts Material To Consideration

Appellant, Camille Fjetland a widow in her thirties with two children, and a Earth Enterprises, Inc., dba Portside Recycling, a Washington Corporation in good standing, sued multiple defendants. These included the Widow's former guardian, Bobby Delavergne; the guardian's company, Marine View Recycling, Inc.; the plaintiffs' former legal counsel, Geoffrey Cross; G. Paren Walker, who was counsel for the widow's former sister-in-law who was a minority share holder in another company wherein the widow owned the majority interest; the original court commissioner, James M. Marshall, who found the widow incompetent allegedly without any jurisdiction to do so; and two corporate competitors of Earth Enterprises, Inc., Lone Star Northwest and Tucci & Sons, Inc.. Lone Star had been the employer of Mr. Delavergne during part of his guardianship. The allegations included conspiratorial actions designed to deprive the Widow of her own real and personal property as well as tangible and intangible property belonging to the corporate plaintiff by various means including the improper use of the Washington State guardianship proceedings. The allegations in federal court included allegations of violations of federal civil rights, RICO and anti-trust laws as well as related state causes of action including breach of fiduciary duties on the parts of the former

guardian and the former attorney for the Widow. The federal causes were justiciable in District Court pursuant to 15 U.S.C. §15, § 1964(c), and 42 U.S.C. § 1983.

On March 2, 1993, a guardian (the sister-in-law's nephew) was appointed for the Mrs. Fjetland by court commissioner Marshall on the same day that the petition to appoint him guardian was filed. None of the many statutory or due process safeguards or regularly scheduled proceedings required before the appointment of any guardian were followed. A commissioner would only have jurisdiction to hear a guardianship case in Washington if the defendant waived her right to a jury trial or agreed that he could sit as a judge pro-tem and there is no record of Mrs. Fjetland doing either. The original order was signed by Commissioner Marshall as a court commissioner, not a judge or judge pro-tem.

It was argued that because the Widow was present in court (she was at the courthouse that day to attend a receivership hearing brought by her sister-in-law in another courtroom before another judge) and may, at the direction of Mr. Cross, have signed the petition, she waived all procedural irregularities. There is no record of any guardianship hearing or proceedings in the Fjetland matter as required by the laws of the State of Washington on the date that Commissioner Marshall was supposed to have signed the order in open court. All superior courts are required to have records of their proceedings where any evidence or testimony is taken because they are courts of record otherwise the proceedings are invalid. There is no record of any waiver of rights.

By the date the federal court suit was filed on January 4, 1995, the state court had found on October 28, 1994, that the prior guardianship proceedings were irregular, that, no consent could be attributed to the prior adjudication of the need for a guardian, and that if the Widow were competent to grant her consent to the proceedings and waive all of her procedural safeguards it was probable that she could not be found to be incapacitated to handle her personal and business affairs and there would be no basis for the appointment of a guardian (Appendix XV - XXII).

While the guardianship had been pending, the Widow's real and personal property and all of the Corporate Appellant's assets had

been transferred by Mr. Cross and Mr. Delavergne to Mr. Delavergne's company, Marine View Recycling by direct and indirect transfers and a lease[1]. Some of Earth Enterprises leasehold interests where transferred to Tucci and Lone Star and Earth Enterprises was effectively put out of business competing with either of these companies (see complaint appendix page LIX).

When the Guardianship proceedings were challenged in October, 1994, several defendants in this suit still appeared to be making or supporting allegations that the Widow was mentally incapacitated. The Superior Court took a middle ground of not dismissing the guardianship proceedings but suspending the guardian. It required him to file a new petition for the appointment of a guardian (Appendix XV - XXII). This required him to prove whether Camille Fjetland was incapacitated under the Washington State guardianship laws. This middle ground left the confusion of the transfer of property rights to be sorted at some future time.

Shortly thereafter, the now suspended guardian did file a new petition for the appointment of a guardian for the Widow. At that point, on November 3, 1994, the state court appointed a guardian ad litem to investigate the mental capacity of the Widow and report back whether there was a need for any kind of guardianship, be it temporary or permanent, partial or full, and what rights, if any, should be restricted. The order specifically stated that the guardian ad litem's sole duties were "...to report to the court as to the merits of the Petition for Guardianship pursuant to RCW 11.88.090." That guardian ad litem sought and got two further court orders that specifically restricted her duties to investigation of the competency of Camille Fjetland and relieved her of any duties or responsibilities for Mrs. Fjetland's estate. A trial date on the guardianship petition was to be set later and it was finally set for May 6, 1996. The petition and the guardianship was dismissed in

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1. The second guardian was appointed after the first guardian, the nephew, agreed to step aside, and after his appointed co-guardian, the sister-in-law, refused to serve. Mr. Cross represented all parties. It was a made for television script.

BEST AVAILA

1996 before it came to trial. But the statutes of limitations against Fjetland and Earth Enterprises's federal actions, some dating to 1993, continued to run, and run out.

We argued in the federal case that the suspension of the Guardian had at the least reestablished all of the Widow's civil rights to control her own financial affairs and the affairs of those businesses and properties abandoned by the Guardian. But rather than volunteer to represent Marine View Recycling in its petition to the City of Tacoma for rezoning of some of Mrs. Fjetland's property that it controlled at the time under a lease it subsequently abandoned, we allowed its counsel, Mr. John Hickman, who also represented Mr. Delavergne, to continue as counsel of record because we did not oppose the rezoning. That resulted in Mr. Delavergne being reinstated as "guardian" solely for that very limited purpose. In the end, we took over those duties prior to the dismissal of the guardianship when Marine View Recycling abandoned property and the lease and filed bankruptcy.

Lone Star appeared through counsel on January 11, 1995. Tucci & Sons, Inc. appeared through counsel on January 13th[2]. Mr. Walker appeared pro se on January 18th and, on January 27th, by counsel. Mr. Cross appeared by counsel on January 24th and Mr. Hickman appeared for Mr. Delavergne and Marine View Recycling on January 26th. On that date Mr. Marshall filed his motion to dismiss pursuant to Fed.R.Civ.P. 12(b) for failure to state a claim. Lone Star filed its own motion to dismiss or for a more definite statement on January 27th and joined in Commissioner Marshall's motion on February 13th. On March 9 the District Court Judge ordered the plaintiffs to show cause in fifteen days why the case should not be dismissed for lack of capacity to sue. The order read:

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ile both Tucci's counsel, Mr. Christopher M. Huss and the
el for Mr. Delavergne and Marine View Recycling, Mr.
R. Hickman both were at least as qualified as anyone to ask
es pursuant to the district court's Fed. R. Civ. P. 11
ons order, neither joined the feeding frenzy that gripped
other counsel.

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> "It appears from the pleadings in this cause of action that plaintiff, Camille Fjetland, has a court-appointed guardian, and thus, plaintiff lacks capacity to bring a cause of action without leave of the guardian. RCW 11.92.060(1) incorporated through Fed. R. Civ. P. 17(b). Accordingly, plaintiff is ordered to show cause why this case should not be dismissed by filing with the Court within fifteen (15) days from the date of this order, a copy of the court order terminating her guardianship, as of the date of filing, January 4, 1995. Unless plaintiff can demonstrate termination of guardianship, this case will be dismissed for lack of capacity to sue on the part of plaintiff."

The courts footnote went on to say, with no explanation: "Plaintiff companies suffer from the same incapacity."

On March 10 Mr. Blue substituted as counsel on behalf of Mr. Walker. On March 22 Mrs. Fjetland and Earth Enterprises moved the court to reconsider its order of March 9 that had the effect of dismissing all of Plaintiffs' actions in federal court. Mr. Blue moved on March 23 to dismiss Plaintiffs' actions against Mr. Walker. On March 24 the court denied the motion to reconsider and dismissed the action without prejudice based upon lack of standing. Notice of Appeal was filed on April 24, 1995.

On May 18th Mr. Cross moved for rule 11 sanctions against plaintiff and counsel. Mr. Walker made a similar motion on May 31. Commissioner Marshal made a similar motion on June 14th. On July 12th The District Court determined that sanctions were warranted against Mr. Campbell because he persisted in insisting that Mrs. Fjetland and Earth Enterprises, Inc. had claims justiciable in federal court without seeking permission of Mr. Delavergne, or the guardian ad litem or the state court, for arguing that a valid claim did lie against Commissioner Marshall, and for stating to the court that "[t]here is nothing in the record that requires the presumption of incapacity of Mrs. Fjetland...." On the basis of this assertion the District Court found that "Because Mr. Campbell mislead the Court, a show cause order was required, thereby escalating the expenses of an already invalid and frivolous lawsuit." Did the District Court thus adjudicate the merits of the lawsuit after dismissing Plaintiffs' cases

without prejudice for lack of standing to sue?

The Ninth Circuit confirmed all of these rulings, in effect cementing an insurmountable District Court ruling that the underlying cases were invalid and frivolous and creating a de facto dismissal with prejudice of cases that were never really considered on their own merits.

On July 27th Lone Star made its motion for rule 11 sanctions which was granted on August 15th. On August 31st Lone Star and Cross were awarded judgments against Campbell in the sum of $12,650 each. On October 10th Defendant Walker was awarded judgment against Campbell in the sum of $19,154.12. Commissioner Marshall, represented by the Pierce County Prosecutor's office was awarded judgment against Campbell on November 9, 1995 in the sum of $4,995. All $49,449.12 in awarded judgments pursuant to Fed. R. Civ. P. 11 against Mr. Campbell were also appealed.

ARGUMENT

Standing - Not Proper to Dismiss

It has been held in other Circuits that it is improper for the federal district court to dismiss based upon lack of capacity to sue where the general representative guardian and the ward are in conflict and/or where the complaint alleged the guardian had failed in his representative capacity, Development Disabilities Advocacy Center, Inc. v. Melton, 689 F.2d 281 (CA 1 1982) Adelman ex rel Adelman v. Graves, 747 F.2d 986 (CA 5th, 1984); Noe v. True, 507 F.2d 9 (CA 6th, 1974); and In re Air Crash Disaster Near Saigon, South Vietnam on April 14, 1975, 476 F.Supp 521 (D DC 1979). See Moores Federal Practice Second, Ch 17 ¶17.26 note 9. In these cases the court felt it necessary for the district court to conduct its own investigation of competency and appropriateness of representation. There is clearly current case law in other circuits that does not support the dismissal, as granted by this court, without inquiry by the court into the alleged conflicts of interest and the adequacy of representation.

It is recognized in other federal courts that the district court has not abandoned its inherent right to appoint a special representative to protect the rights of an alleged incapacitated

person. The Sixth Circuit held Noe v. True, supra, that the district court should have determined if the guardian was adequate, a factual determination, or appointed a guardian ad litem or made some other order necessary to protect the interest of the alleged incompetent. The District Court has the inherent power to appoint a guardian ad litem for a minor or incompetent if it appears that the interests of the general representative conflict with those of the person represented, Hoffman v. General Motors Corp., (CA 5th, 1981) 656 F.2d 161, cert. denied (1982) 456 U.S. 961, 102 S.Ct. 2037, 72 L.2d 485.

Standing - Dismissal Violates Constitution

We argued below that both Mrs. Fjetland and Earth Enterprises were entitled to standing under the constitution and to the extent that Fed. R. Civ. P. 17 was used to automatically deny them standing, it was unconstitutional. We further argued that even under that rule Earth Enterprise could not be denied standing as it was a corporation in good standing under the laws of the State of Washington. Furthermore we argued that Mrs. Fjetland should not be dismissed because of the rule but rather that the rule required the trial court to consider other methods to protect her if, after hearing, it determined she was not competent to act as the plaintiff in these cases. Finally we argued that under the singular facts of this case, Mrs. Fjetland should not have been denied standing.

The trial court ruled that because a guardianship proceeding was pending in state court neither she not Earth Enterprises had standing. Standing a jurisdictional question. Warth v. Seldin, 422 U.S. 490, 500, 95.S.Ct. 2197, 2205, 45 L.Ed.2d 343 (1975) If the parties lack standing, then the court lacks jurisdiction to consider their cause. Fed. R. Civ. P. 11 seeks to apply the different rules of some fifty states and several territories and the District of Columbia to the question of federal court jurisdiction. No uniform rule is applied here. This is quickly illustrated by a comparison of just a few state laws governing the appointment of guardians (see appendix for full text).

In Indiana guardians may be appointed for, among others, anyone who is unable to manage in whole or in part the individual's property or provide self-care; or both; because of insanity, mental

illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity. Ind. Code 29-3-1 § 7.5.

In Missouri guardians may be appointed for anyone who is adjudged incapacitated and that is defined as anyone who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that he lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness, or disease is likely to occur. Mo.Rev.Stat § 475.010(9)

In Arizona guardians may be appointed for any "Incapacitated person," meaning any person who is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person. Ariz.Rev.Stat. § 14.5101, 14.5304.

In California the procedure is called a conservatorship and is quite different and detailed. Relevant parts of the California Statutes are set out in the Appendix, Cal.Prob.Code §§ 810, 811, 812, 813, 1820 and 1821.

In Washington guardians may be appointed for any incapacitated person and a person may be deemed incapacitated as to person when the superior court determines that the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety. A person is deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property of financial affairs. RCW 11.88.010 (a) and (b)

Of course, application of Indiana's guardianship law, with the state choosing the guardian, could certainly cut down on civil rights suits by convicts in federal court by following the rules as laid down in this case. This would be against a line of authority has held that the state civil disability, *civiliter mortuus*, cannot affect the

capacity of such prisoners to maintain suits under 42 U.S.C.A. §1983 despite Fed. R. Civ. P. 17(b), McCollum v. Mayfield, 130 F.Supp. 112, (N.D. Cal. 1955) aff'd sub.nom. Weller v. Dickerson, 314 F.2d 598 (9th Cir. 1963), cert den. 375 U.S. 845, 84 S.Ct. 97, 11 L.Ed.2d 72 (1963); Almond v. Kent, 459 F.2d. 200, 15 Fed.Rules.Serv.2d 1531 (C.A.4, 1972).

Federal court jurisdiction is defined and limited by the provisions of Article III and by the acts of Congress, Owen Equipment & Erection Co. V. Kroger, 437 U.S. 365, 98 S.Ct. 2396, 57 L.Ed.2d 274 (1978).

Fed.R.Civ.P. 17 is trying to incorporate numerous standards of many jurisdictions into federal law to determine standing. This results in no national standard of either physical or mental competence or incapacity to determine standing. It imposes as part of the federal court jurisdictional requirements a multitude of varied and even conflicting state and territorial standards. This violates Article III sections 1 and 2 of the United States Constitution and what has heretofore been considered part of the fundamental laws of this land. Harrison v. St. Louis & San Francisco R.R. Co., 232 U.S. 318, 328, 34 S.Ct. 333, 335, 58 L.Ed. 621 (1914):

> "It may not be doubted that the judicial power of the United States as created by the Constitution...is a power wholly independent of state action, and which therefore the several states may not by any exertion of authority in any form, directly or indirectly, destroy, abridge, limit, or render inefficacious. The doctrine is so elementary as to require no citation of authority to sustain it. Indeed, it stands out so plainly as one of the essential and fundamental conceptions upon which our constitutional system rests, and the lines which define it are so broad and so obvious, that...the attempts to transgress or forget them have been so infrequent as to call for few occasions for their statement and application.

This doctrine was partially modified by the case of Eire R. Co. v. Tompkins, 304 U.S. 64, 82 L.Ed 1188, 58 S.Ct. 817, 114 A.L.R. 1487 (1938) that held that substantive state law that would provided certain defenses in state courts would provide those same

defenses in federal court in diversity of citizenship cases otherwise based upon state law. However this case does not deal with a diversity case or any substantive defenses that might even be raised to the causes pled under pendente jurisdiction.

Where, as in this case, the resort to federal court is on federal grounds, and not on diversity of citizenship, the limitations upon the state courts, if any, do not control the federal court sitting in the state. Angel v. Burlington, 330 U.S. 183, 192. 91 L.Ed. 832, 838, 67 S.Ct. 657, (1946):

> "Of course, where resort is had to a federal court not on grounds of diversity of citizenship but because a federal right is claimed, the limitation upon the courts of a State do not control a federal court sitting in the State. Holmberg v. Armbrecht, 327 U.S. 392, 90 L.Ed. 743, 66 S.Ct. 719 (1946)."

It has been specifically held in the Sixth Circuit that a state may not prescribe the qualifications of suitors in federal court, Midland Linseed Products Co. v. Warren Bros. Co., (CCA 6), 46 F.2d 870 (1925).

Jurisdiction of federal courts over federal law and federal constitutional issues is not and never has been controlled by state law, Davis v. Ensign-Bickford Co., 139 F.2d 624 (CA 8 Ark, 1944), Sylvan Beach, Inc. v. Koch, 140 F.2d 852 (CA 8, Mo. 1944). A Washington State statute that prohibited an injunction to restrain collection of taxes did not limit the jurisdiction of the federal courts, Skagit County v. Northern P. R. Co., 61 F.2d 86, 86 A.L.R. 1012 (CA 9 Wash. 1932).

Even the Ninth Circuit, prior to this case, continued to confirm this doctrine and said in the case of Duchek v. Jacobi, 646 F.2d 415, 419 (9th Cir. 1981):

> "In determining jurisdiction, district courts of the United States must look to the sources of their power. Article III of the United States Constitution and Congressional statutory grants of jurisdiction, not the acts of state legislatures. However extensive their power to create and define substantive rights, the states have no power to directly enlarge or contract federal jurisdiction. (numerous

cases cited in footnote 4).

See also Gilcrest v. Jim Slemons Imports, Inc., 803 F.2d 1488 (CA 9, 1986). As pointed out in Linn County v City of Hiawatha, 311 N.W.2d 95 (Iowa 1981) when federal subject matter jurisdiction exists, a litigant does not need permission of a state legislature to sue in federal court.

The jurisdiction of the United States District Court cannot be created, increased or decreased by agreement or stipulation of parties, an act of any state legislature nor by any decision of any state supreme court, Labiche v. Lousiana Patients Compensation Fund Oversight Bd., 69 F.3rd 21 (5th Cir, 1995). Standing is a jurisdictional inquiry, and states have no power directly to enlarge or contract federal jurisdiction, MAI Systems Corp. V. UIPS, 856 F.Supp. 538 (N.D.Cal, 1994). For a list of citations to well settled doctrine that a right created by federal law can be heard in federal court regardless of whether or not the person could have had the capacity to pursue that right in state court see generally Underwriters at Lloyds v. Haulover Marine, Inc., 866 F.Supp. 235, 236 (V.I. 1994).

Fed. R. Civ. P 17 Justifies No New Abstention Doctrine

"A federal court's obligation to adjudicate claims within its jurisdiction is 'virtually unflagging'." Yamaha Motor Corp., U.S.A. v. Riney, 21 F.3d 793, 797 (8th Cir, 1994) citing Deakins v. Monaghan, 484 U.S. 193, 203, 108 S.Ct. 523, 530, 98 L.Ed.2d 529 (1988). The door to the federal courthouse swings quite wide, and will not be slammed in a litigant's face unless a federal statute itself mandates such a result, Pari Mutuel Clerk's Union of Lousiana, Local 328 v. Fair Grounds Corp., 703 F.2d 913, certiorari denied 464 U.S. 846, 104 S.Ct. 150, 78 L.Ed.2d 140 (C.A. La 1983).

There is a narrow doctrine of federal court abstention developed from the case of Younger v. Harris, 401 U.S. 37, 45, 91 S.Ct. 746, 751, 27 L.Ed.2d 669 (1971) that reinforces how very unflagging that adjudicatory doctrine is. Under the doctrine of abstention, the federal court can abstain from extending its adjudicative authority only if there is 1) ongoing state judicial proceedings that 2) implicate important state interests, and 3) there is an adequate opportunity in those state proceedings to raise and

have timely decided the federal claims. One necessary predicate to the doctrine is that requirement that a competent state tribunal provide the opportunity to raise and timely decide the issues involved, Huffman v. Pursue, Ltd., 420 U.S. 592, 594, 95 S.Ct. 1200, 1203, 43 L.Ed.2d 482 (1975); Gibson v. Berryhill, 411 U.S. 564, 577, 93 S.Ct. 1689, 1697, 36 L.Ed.2d 488 (1973). It was pointed out in Colorado River Water Conservation Dist. V. United States, 424 U.S. 800, 817, 96 S.Ct. 1236, 1246, 47 L.Ed.2d 483 (1976) that the appropriateness for restraining from exercising jurisdiction is the exception not the rule, and should be rarely exercised ibid 424 U.S. at 813, 96 S.Ct. At 1244, See Bridges v. Kelly, 84 F.3rd 470, 475 (1996). Certainly the guardianship proceedings in the state court could not address the varied claims against all of the parties in this action and indeed, several parties in this action were not even parties in that action and that action was not one designed for an adversary proceeding between the plaintiffs and the defendants in this action.

Strict Application of Federal Rule of Civil Procedure 17(b) and (c) Violates Americans With Disabilities Act of 1990, 42 U.S.C.A. §12101 *Et seq.*

Recent policy changes both at the federal and state level indicate Mrs. Fjetland has every right to bring this action. The federal changes involve the Americans With Disabilities Act of 1990, 42 U.S.C.A. §12101 *et seq.*.

Mrs. Fjetland has her right to have the application of that statute determined in reference to this action. 28 U.S.C.S. §2071 states:

> (a) The Supreme Court and all courts established by Act of Congress may from time to time prescribe rules for the conduct of their business. Such rules shall be consistent with Acts of Congress and rules of practice and procedure prescribed under section 2072 of this chapter.

The rules must be consistent with acts of Congress, Anchorage Associates v. Virgin Islands Bd. Of Tax Review, 922 F.2d 168 (CA 3rd, 1990); Gerritsen v. Escobar y Cordova, 688 F.2d 556 (C.D.Cal. 1988); American Brake Shoe & Foundry Co., v. Interborough Rapid Transit Co., 1 F.Supp. 820 (D.C.N.Y. 1932).

We argued that the literal application of FRCP 17[c] in this case was in conflict with The Americans With Disabilities Act of 1990, 42 U.S.C.A. §12101 *et seq*, and we are not familiar with case law that refutes this argument.

This act follows the policy that liberty and autonomy should only be restricted because of any disability to the minimum necessary to adequately provide for the disabled's health and safety or adequately manage their financial affairs. RCW 11.88.005 provides the same policy statement for Washington guardianship proceedings.

The policy set forth in the Americans With Disabilities Act of 1990 should restrict the strict application of FRCP 17. 42 U.S.C.A. §12101(a)(7), (8)and (9), found that disabled people, such as those considered "incapacitated," form a discrete and insular minority, segregated from and stripped of power by society and denied their innate rights to utilize their abilities to participate in and contribute to society and these persons are entitled to the equal protection of the laws and full participation in society with independent living and economic self sufficiency and must be allowed to compete on an equal basis.

The automatic application of FRCP 17[b] and [c] to exclude people with disabilities from representing themselves before the court is no longer in touch with the congressional mandates expressed in the Americans With Disabilities Act of 1990. Application of FRCP 17[b] in this case results in the application of "stereotypic assumptions not truly indicative of the individual ability of ..." Mrs. Fjetland in violation of the clear policy of Congress. As such it violates the first avowed purpose of the act, 42 U.S.C.A. §12101(b)(1): "to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;..." It also violates the purpose of that act, 42 U.S.C.A. §12101(b)(4) which invokes the full sweep of Congressional power under the fourteenth amendment and the commerce clauses to address the day to day discrimination.

Violation of 14th Amendment Rights:

Under the fourteenth amendment to the United States

Constitution, neither Earth Enterprises, Inc., nor Mrs. Fjetland can be denied effective access to the courts, Bounds v. Smith, 430 U.S. 817, 97 S.Ct. 1491, 52 L.Ed.2d 72 (1977); Atkins v. U.S. 556 F.2d 1028, 214 Ct.CL 186, (1977) certiorari denied 434 U.S. 1009, 98 S.Ct. 718, 54 L.Ed.2d 751; Silver v. Cormier, 529 F.2d 161 (C.A.Colo 1976), Gittlemaker v. Prasse, 428 F.2d 1 (C.A. Pa. 1970). This applies to the mentally ill, Ward v. Kort, 762 F.2d 856 (C.A. 10 Colo 1985), Armstead v. Pingree, 629 F.Supp. 273 (M.D.Fla. 1986), Johnson v. Brelje, 482 F.Supp. 125 (C.C.Ill 1979).

Were Mrs. Fjetland now considered to be incapacitated by the mere pendency of a guardianship or conservatorship proceeding, such a proceeding would require Mrs. Fjetland to go before the court and prove her capacity. She would be considered stripped of all of her civil rights and be presumed incapacitated. Such action would surely violate the due process clause of the fourteenth amendment. It is improper to place the burden of proof on the alleged incapacitated person where the initial procedure was invalid, Dorsey v. Solomon, 604 F.2d 71 C.A. Md. (1979), and the plaintiff has the burden of proof in civil commitment proceedings, Benson v. Meredith, 455 F.Supp. 662 D.C.D.C. (1978).

Corporation Never Shown to Lack Standing

At no time was Earth Enterprises, Inc., ever shown to lack standing to sue. Federal Rule of Civil Procedure Rule 17(b) states that "The capacity of a corporation to sue or be sued shall be determined by the law under which it was organized." Earth Enterprises, Inc., was specifically described as a Washington Corporation (Complaint paragraph 2) founded in 1990 and in good standing until January 1, 1996 [Docs. # 7 and # 64] when the suit was filed on January 4, 1995. No one questioned that is was in good standing at the time of the suit. It had been reinstated by Mrs Fjetland on December 1, 1994, after Delavergne had abandoned it by allowing its corporate charter to lapse for non-payment of annual license fees. RCW 23B.03.020(2)(a) provides the corporation can sue and be sued in its own name.

An extreme example should illustrate why the corporation could not be denied standing because its majority shareholder, who

may be an officer or on the board, is the defendant in a guardianship or conservatorship action. Suppose, in his reclusive days, someone had been able to bring an action for to appoint a conservator or guardian for Howard Hughes and to have caused him to be served. Would that have brought a screeching halt to all legal activity in the Hughes Tool and Machinery Company until it was approved by a guardian or a guardian ad litem? Earth Enterprise was a separate person, legal entity, entitled to equal protection under the laws.

Fed. R. Civ. P 11 Sanctions

The trial court ruled that Mr. Campbell violated Fed. R. Civ. P 11(b)(2) by asserting claims, defenses and other legal contentions not warranted by existing law and Fed. R. Civ. P 11(b)(3) making allegations and other factual contentions without evidentiary support.

The trial court reasoned that "...Mr. Campbell, knew that Plaintiff had co appointed guardians [and] he should not have filed suit without naming the guardians as parties to the suit." Furthermore, the court reasoned,

> "even after three parties filed motions to dismiss based on Plaintiff's lack of standing, Mr. Campbell maintained his position, knowing that his client did not have capacity to sue."

The trial court held that the law was clear pursuant to Fed. R. Civ. P. 17(b)

> "that the guardian must bring the action on the part of an incompetent or the court must give its approval prior to the initiation of any legal action brought in the name of the incapacitated person."

Further, in proceeding to the merits of one of the cases and beyond the question of standing, the trial court observed that "Mr. Campbell argued that Commissioner Marshall had no personal jurisdiction over Plaintiff," and that the plaintiff received no statutory notice of the proceedings (which had been admitted by Mr. Cross in open court in the state court proceedings, Appendix XVI), but that because Mrs. Fjetland "was present with her attorney" (who was in that case the petitioner's attorney) his argument again violated Fed. R. Civ. P 11(b)(2) by not having any basis in law or fact.

Under Washington law a guardianship hearing could have even been held in Mrs. Fjetland's bedroom, RCW 11.8 8.040, and the mere presence of Mrs. Fjetland in the room, especially under the circumstances of this case, would not have given Commissioner Marshall personal jurisdiction until he had qualified to hear the case under Washington Law. This he could not do without a record of the proceedings showing that he was proceeding under Washington Law and not his own private system of justice. That court record would have to show that she was there voluntarily and had voluntarily waived her various rights including a jury trial. State Court Commissioner Foley had ordered the prior guardian suspended and a new petition filed because of just such jurisdictional irregularities.

We had argued:

> "There is now some argument that Mrs. Fjetland waived her rights to notice and an adequate opportunity to be heard, including the an opportunity to prepare for that hearing, by appearing in court on the day the petition was presented and signing the petition and order. This presupposes that she signed the petition and order before it was presented and that she was in court that day specifically for that hearing. Both of these are disputed factual questions. Furthermore, waiver of rights cannot be presumed unless it is the waiver of a known right. That means the court must find the party's conduct was inconsistent with any other intent other than the waiver of that right, Wagner v. Wagner, 95 Wn.2d 94, 102, 621 P.2d 1279 (1980), and In re Bellanich, 43 Wn.App. 345, 349, 717 P.2d 307 (1986). There is no showing that before Commissioner Marshall appointed Joe Esson as a guardian, Camille Fjetland knew any of her rights in response to a petition for the appointment of a guardian. Even the petition itself was misleading as it requests the court to appoint a guardian ad litem, which was not done.

The statutory notice that is required by law to initiate Guardianship proceedings under RCW 11.88.030 is set forth in the appendix, page XLI. We continued:

> Where a special statute provides a method of

process, compliance therewith is jurisdictional, Sowers v. Lewis, 49 Wn.2d 891, 307 P.2d 1064 (1957) cited favorably in Ashley v. Superior Court 83 Wn.2d 630, 521 P.2d 711 (1974). Substantial compliance with the statutory method of process is required, Provident Mut. Life Ins. Co. v. Thrower, 155 Wash. 613. 285 Pac. 654 (1930). In this case that requires service of the preceding statutory notice on both the alleged incapacitated person and the guardian ad litem. Until that process requirement is complied with, the court has no jurisdiction to adjudicate the issues. In Washington it has been held and confirmed that:

> "Jurisdiction of the subject matter means not only authority in the court to hear and determine the class of actions in which the particular action is comprised, but also authority to hear and determine the particular question which it assumes to determine; hence the essential elements of jurisdiction are said to be three: (1) the court must have cognizance of the class of cases to which the one to be adjudged belongs; (2) the proper parties must be present; and (3) the point decided must be, in substance and effect, within the issues before the court."

State ex rel New York Cas. Co v. Superior Court, 31 Wn.2d 834, 840, 199 P.2d 581 (1948) cited with approval in State ex rel Troy v. Superior Court, 38 Wn.2d 352, 357, 229 P.2d 518 (1951). In Washington, a constitutional court cannot obtain jurisdiction by agreement or stipulation, Barnett v. Hicks, 119 Wn.2d 151, 829 P.2d 1087 (1992); Wesley v. Schneckloff, 55 Wn.2d 90, 346 P.2d 658 (1959). So were Mrs Fjetland capable, at the time, of consenting to jurisdiction, she could not confer that jurisdiction upon the court.

Furthermore, there was no evidence before a court of record supporting any factual finding made by any court or a jury in the Fjetland Guardianship proceedings that she was incapacitated to manage either her estate or personal affairs on March 2, 1993 or that

the court had any jurisdiction over the person or subject matter of the proceedings. Commissioner Marshal did not make a finding on incapacity to handle her estate or her personal matters, but merely stated that the contention in the petition that Camille Fjetland was "mentally incompetent," what ever that might mean, was true. The order merely states that the "petition sets forth facts essential to give the court jurisdiction over the person and estate of Camille Fjetland."

The order of Commissioner Marshall does not state what the facts were that the court actually found. The petition itself omits numerous allegations required by RCW 11.88.030. A record of the proceedings of March 2, 1993, does not exist as required, State v. Woods, 72 Wn.App. 544, 865 P.2d 33 (1994). Commissioner Marshall is precluded under Washington law from maintaining he was a judge of a court of record. He does not have the record! (See especially the certified copies of affidavits filed in the Pierce County Superior Court from the two court reporters on duty that date and covering the records of the Pierce County Superior Court Clerk (Appendix XIV-XV).The district court never conducted any evidentiary hearing. It never even gave us an opportunity to present this or any evidence on the subject.

In the Woods case the court neither employed a court reporter nor employed electronic recording devices to make a verbatim report of proceedings. State v. Woods. 72 Wn.App. @ 546:

> "A clerk simply made minute entries as to the time the proceedings began; the identity of parties, counsel and witnesses present; the time each witness testified; the nature of the exhibits offered or admitted; and a summary of the courts rulings."

Those notes considerably exceed the amount of information recorded in Mrs. Fjetland's supposed guardianship hearing before Commissioner Marshall. No information of any such initial hearing was recorded in the Fjetland guardianship.

The Woods case *supra.*, was a paternity case that did not require or provide for a jury trial, so a commissioner could hear the case. The parties argued over the standard of proof required to support a finding of paternity. The appellant argued that the evidence should have been clear, cogent and convincing and the

respondent argued it merely needed to prevail by a preponderance of the evidence. The court favored the respondent but found that the record did not even support such a finding because the court failed to make a record of its proceedings. State v. Woods, 72 Wn.App. @ 550:

> "The state constitution provides, 'the superior courts shall be courts of record....' Const. Art. 4, §11. The revised code echoes the constitution: '[t]he superior courts are courts of record...." RCW 2.08.030. The accepted definition of a 'court of record' is '(a) court that is required to keep a record of its proceedings, and may fine or imprison." Black's Law Dictionary 19 (5th ed. 1979).
>
> A statute assigns the duty of recording court proceedings to the superior court clerk. '(I)t is the duty...of each county clerk for each of the courts for which he is clerk...(t)o record the proceedings of the court.' RCW 2.32.050(2). Here, not only are we lacking a verbatim report of proceedings, we do not even have a summary of the witnesses' testimony.
>
> Clerk's minutes of the type providing the sole record here do not satisfy the recording requirement. Washington CR 80 states,
>
> > (I)n any civil or criminal proceedings, electronic or mechanical recording devices approved by the Administrator for the Courts may be used to record oral testimony and other oral proceedings *in lieu of or supplementary to* causing shorthand notes thereof to be taken.
>
> (Italics ours.) CR80. The language of this rule indicates that while the method of recording hearings may change, there must be an adequate record."

In Pierce County they still use short hand reporters. Lest this court be confused between the papers in the file and the record, RCW 2.32.050 clearly differentiates files and records. In setting forth the clerk's duties, it states that it is the duty of the clerk:

"(2) To record the proceedings of the court.

(3) To keep the records, files and other books and papers

appertaining to the court.

(4) To file all papers delivered to him for that purpose in any action or proceeding in the court as directed by court rule or statute."

Clearly records, papers and files are differentiated and the order of Commissioner Marshall of March 2, 1993, is unsupported by the record to be kept by the clerk. There is no record that Commissioner Marshall ever considered any facts what-so-ever to support any findings, conclusions or orders on March 2, 1993, what ever those facts may have been, jurisdictional or substantive on the issues. In fact, the lack of hearing record of that date does not even support an argument that the petition was filed in the Superior Court before Commissioner Marshall signed the order appointing Joe Esson a guardian and found Mrs. Fjetland incompetent.

The judges and the commissioners do not act alone in the exercise of the record court's jurisdiction. When they must make findings of fact to support their action, they must create the record. It is this record that preserves their right to claim that they have acted in their judicial capacity as representatives of a court of record. Thus the clerk with his or her record is part of the court and without his or her participation, the court fails to be a court of record. Commissioner Marshall then becomes the commissioner of his own private jurisdiction and there is no provision in the law recognizing the private jurisdiction of Commissioner Marshall.

Commissioner Marshall had no record to support his jurisdictional defenses. The facts of what happened are quite controverted and the conclusions to be drawn therefrom depend upon what is to be believed from these controverted facts. Mrs. Fjetland has always denied that she approved of the guardianship or went to the court seeking a guardianship. Even if those facts were determinative of the jurisdictional questions, (and we have maintained as a matter of law that they are not) there is no record to support Commissioner Marshall's contentions that she voluntarily submitted to jurisdiction or approved of the proceeding.

The Washington State Constitution Article 4 § 23 sets forth the basis for Commissioner Marshal's authority. That article states:

"There may be appointed in each county, by the

judge of the superior court having jurisdiction therein, one or more court commissioners, not exceeding three in number, who shall have authority to preform like duties as a **judge of the superior court at chambers**, subject to revision by such judge, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law. (emphasis added)

The term "at chambers" permits the Commissioner to hear and decide all actions, causes, motions, demurrers and other matters which do not require trial by jury, State ex rel Lockhart v. Claypool, 132 Wash. 374, 377, 232 P. 351 (1925), State v. Woods, 72 Wn.App. 544, 548, 865 P.2d 33 (1994), In re Olson, 12 Wn.App. 682, 531 P.2d 508 (1975). Guardianship proceedings under RCW Chapter 11.88 provide for jury trials. So there was no general jurisdiction for the commissioner to have heard this case. RCW 11.88.045(3):

"The alleged incapacitated person is further entitled upon request, to a jury trial on the issues of his or her alleged incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent and convincing evidence."

The lack of record returned Commissioner Marshall to a dilemma. If he argued she was competent to know where she was, to waive her rights to process and notices of hearing and to having the matter investigated by a guardian ad litem, with a full understanding of what she was waiving, and she approved the petition, he defeats the argument that he had jurisdictional grounds to appoint a guardian for her personal and financial affairs, as she would have to have had her full mental capacity to have waived all of those rights. If he argued she was mentally incapacitated, he defeats his argument that she could consent to the jurisdiction and the proceedings. He has no record to resolve this dilemma. At best, for Commissioner Marshall, it leaves a number of factual questions that should be resolved by the trier of fact, in this case, the jury.

Mrs. Fjetland is deprived of the record part of the Superior Court as a court of record to challenge his actions, either collaterally or through appeal. Mrs. Fjetland has been deprived of her right to have her proceeding heard by a court of record, the Superior Court,

as directed by the legislature, RCW 11.88.010 (1). We challenged the jurisdiction of Commissioner Marshall and part of the challenge concerned the lack of jurisdictional notice required by law, RCW 11.88.030(4)(a)and (b). This would support Mrs. Fjetland's position herein that, 39 AmJur 2d Guardian and Ward §41: "According to the general rule, failure to give proper notice is a defect which goes to the jurisdiction of the court, rendering the appointment of a guardian without proper notice to the incompetent void, and subject to collateral attack." (Our emphasis)

When we defended her right to sue in this lawsuit we conducted collateral attack on the state guardianship proceedings. There is clear agreement that she never was served with this notice. There is no record of her waiving her right to this notice because Commissioner Marshall did not act as a judge or a commissioner of a court of record.

No Right to Create Private Systems of Justice And Avoid Personal Liability

Commissioner Marshall and Mr. Cross were not just guilty of some procedural irregularities. They virtually ignored every procedural safeguard and regularity of Guardianship proceedings created by the legislature of the State of Washington. Commissioner Marshall and Mr. Cross created their own private system to control the property and affairs of Mrs. Fjetland. They called this system Guardianship but they did not adopt any of the procedural steps and safeguards of another system by the same name created by the legislature of the State of Washington to control some or all of the private affairs and property of incapacitated persons. The similarity of language, incompetency, incapacity and guardians, was and is purely coincidental. Superior Courts could acquire jurisdiction to adjudicate proceedings under the Guardianship laws created by the State of Washington's legislature. The Superior court could not acquire any jurisdiction to adjudicate proceedings under the private laws created by Commissioner Marshall and Mr. Cross.

Because the proceeding that Mr. Cross and Commissioner Marshall did not exist, no judge or court commissioner, including

Commissioner Marshal, could acquire any jurisdiction over the person or subject matter in those proceedings. No magistrate has the jurisdiction over anyone to enforce his or her own private system of justice and no jurisdiction exists for such a system of justice. That is fundamental to our system of government.

Argument For Mrs. Fjetland's Standing Warranted by Existing Law or Non-frivolous Extension, Modification or Reversal of Existing Law.

No one has ever challenged Fed R. Civ. P. 17 being contrary to The Americans With Disabilities Act of 1990, 42 U.S.C.A. §12101 *et seq*, when the requirements of that act are applied to facts as set forth in this brief. Argument based upon this is allowed by Fed. R. Civ. P. 11[1].

Waiting For a Guardian Ad Litem to Act Would Have Been an Exercise in Futility

It is suggested that we should have awaited the action of the Guardian ad litem. Indeed, Commissioner Foley, on October 28, 1994, had indicated that such a person would protect Mrs. Fjetland's estate. Appendix XXI:

> MR. CAMPBELL: Your Honor, there are seven to ten parcels of land that threaten to be lost because of not paying the taxes. There are a number of other-
>
> THE COURT: The guardian ad litem will immediately investigate that situation, and if it can be rectified, it will be rectified by the guardian ad [item. And the four names that I just gave you are individuals that know what to do in this situation.

But the order appointing the guardian ad litem did not direct her to take any action to protect Mrs. Fjetland's business or estate and she refused to do so, pointed out that her appointment order and duty description order from another commissioner did not require her to do that (Appendix XXIII). She even obtained a third order from a commissioner specifically relieving her of this duty. (Appendix XXIII). Surely Fed. R. Civ. P. 11 does not say that attorneys are barred from protecting the rights of their clients because they did not

go though exercises in futility. **No one else would who supposedly had powers to do so, would step forward to assume the responsibility for protection of Mrs. Fjetland's estate and financial affairs. We did and got severely fined for it.**

Immunity Unconstitutional

When the District Court ventured into the case against Mr. Marshall, it went beyond its prior ruling on standing and dismissal without prejudice and entered the substantive area of the plaintiff's case at a time when the Plaintiffs no longer had any right to argue the substantive nature of that case. Thus the plaintiff was denied the full opportunity to respond to the argument of Commissioner Marshall that he should have been dismissed because of his judicial immunity. Had we had such an opportunity, we would have further argued that such a creation of judicial immunity to clothe the subject with the immunity of the sovereign is a clear violation of Article 1 Section 9 of the United States Constitution prohibiting the United States from granting any Titles of Nobility.

We would request the court to consider this argument now because even if the court reverses the Fed. R. Civ. P. 11 rulings, the trial court may still consider its rulings on Commissioner Marshall's immunity as the law of the case. Furthermore, there is ample authority needing no citation for this court considering such important constitutional issues for the first time.

While modern case law shows little appreciation of the two clauses that prohibit both the United States and the States from Granting any Titles of Nobility (Art. 1 §§ 9 and 10) these prohibitions are not without impressive antecedents. Alexander Hamilton said that this exclusion coupled with the establishment of the writ of habeas corpus and the prohibition of ex-post-facto laws were greater securities to liberty and republicanism than any contained in the New York constitution of the time. He further observed that:

> "Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated as the cornerstone of republican government; for so long as they...are excluded, there can never be serious

danger that the government will be other than that of the people."

No. 84, Federalist Papers, Oliver H. G. Leigh, Ed. 1901 Vol II p. 153. In Downes v. Bidwell, 182 U.S. 244, 277, 45 L.Ed. 1088, 1102, 21 S.Ct. 770 (1901) this court recognized that this clause went to the very root of the government's authority to act and was an absolute prohibition. The second circuit has recognized that the clause refers to more than the mere prohibition on the use of a name, Society Vinole De Champayne v. Mumm, 143 F.2d 240, 62 QSPQ 2 (CCA 2, 1944).

Joel Tiffany observed:

"[T]he general government has no authority to create classes or class distinction among the people; that all its laws shall be enacted upon the hypothesis that all men are created equal, and equally entitled to the hands of their government; that government is an institution of the people, created for the sole and only purpose of administering their authority, to the end that each and all may be secure in the enjoyment of civil liberty; and that equal and exact justice may be administered to all;..."

A Treatise On Government and Constitutional Law (1867) §476, p. 297. While we may have a federal system and within that federal system there may be separation of powers, there is no separation of classes and all the powers derive by, of and from the people. People speak in the judicial branch of the separation of powers as the jury and we cannot create a class of persons by "immunities" that are no longer subject to this review of their actions.

A similar prohibition was considered in the Constitution of the State of Alabama in the case of Horst v. Moses, 48 Ala. 129, 142, Appeal Denied 15 Wal. 387, 21 L.Ed. 176, reheard 52 Ala. 198 (1872). That court observed:

"To confer a title of nobility, is to nominate to an order of persons to whom privileges are granted at the expense of the rest of the people. It is not necessarily hereditary, and the objection to it arises more from the privileges supposed to be attached, than to the otherwise empty title or order. These components are forbidden separately in the terms

'privilege,' 'honor,' and 'emolument,' as they are in the term 'title of nobility.' The prohibition is not affected by any consideration paid or rendered for the grant. Its purpose is to preserve the equality of citizens in respect to their public and private rights."

The prohibition against Titles of Nobility did not just spring into our constitution but was taken directly from the Articles of Confederation and can be found in their infancy in the drafts of these documents prepared between June 17 and July 1, 1776 by both Joshiah Bartlett and John Dickinson, when in the words of Dickinson's draft it was said "Nor shall the Union of any Colony grant any Title of Nobility to any person whatsoever." Bartlett's draft said "...nor shall the [union][United States assembled] or any colony grant any title of nobility (to any person whatsoever)." 4 Letters of Delegates to Congress 1774-1789, 233, 235. In the final adopted draft of the Articles of Confederation, Art. VI, it reads "...nor shall the united states in congress assembled, or any of them, grant any title of nobility." This was adopted directly, without opposition, into the constitution into Article I sections 9 and 10. See generally the four volumes of The Records of The Federal Convention of 1887, edited by Max Farrand (© 1911 and 1937, Yale University Press ©1966 Yale University).

The threat of formation of nobility in this country had been one of the causes of the revolution. John Adams, writing as Novanglus, published this excerpt from intercepted letters of former Massachusetts Governor Francis Bernard on January 30, 1775:

> "Although America is not now (and probably will not be for many years to come) ripe enough for an hereditary nobility; yet it is now capable of a nobility for life. A nobility appointed by the King for life, and made independent, would probably give strength and stability to American governments, as effectually as an hereditary nobility does to Great Britain."

Novanglus and Massachusettensis , by John Adams and Jonathan Sewall, 1819 reprint of material first published in Boston (Russell & Russell, 1968) p. 21. See also Meril Jensen, ed. Tracts of The American Revolution, 1763-1776 (1967) p. 314.

Carl Bridenbaugh has brought to our attention that along with the Royal Navy's action in preventing molasses trade at Newport, the second fundamental grievance there centered on the fact that:

> "Rumors were rife after 1761 that a faction of foreign born residents, headed by Dr. Thomas Moffatt, Martin Howard, George Rowe, the Harrisons, and the Anglican associates, and supported by Governor Bernard of Massachusetts, who urged the creation of 'a Nobility appointed by the King for Life,' planned an assault on the Rhode Island Charter. "

Cities In Revolt, Urban Life In America 1743-1776 (©1955 Oxford University Press,) p. 309. See also Esmond Wright, Fabric of Freedom 1763-1800. © 1961 (Hill & Wang 7th printing) p. 76, and R. R. Palmer, The Age of the Democratic Revolution, Vol 1, p. 176 (© 1966 Princeton University Press - Paperback 1969). In a ministerial pamphlet entitled *The Address of the People of Great Britain to the Inhabitants of America* (London, 1775) Sir John Dalrymple would write "we would even be happy to see you ask for the establishment of a Nobility, and of ranks amongst yourselves." Gordon S. Wood, The Creation of The American Republic 1776-1787, (©1969 University of North Carolina Press) pp. 111-112 and notes 47 and 48.

Judicial privilege was associated in the minds of the founders with Nobility at the time the formation of our nation. Lords had their own courts and even though some might have wished to abandon them because of the expense, in Austria there was a decree in 1786 that they should retain and exercise their judicial roles. These seignioral judicial rights were not finally assumed by the imperial government until 1845. Jerome Blum, The End of The Old Order in Rural Europe, p. 91 (Princeton University Press ©1978). At p.90:

> "Peasants in France, Germany, and as mentioned earlier, Austria, could appeal decisions of the seignioral court to higher jurisdictions, and could appear in these courts as plaintiffs in actions against their seigniors. The process, however, was costly and time-consuming, and the members of the higher courts and bureaus to which they could appeal

usually belonged to the seignioral order and were disinclined to side with peasants against their fellow lords. For many peasants, then, the right of complaint and appeal must have seemed illusory, though some were undaunted, for appeals were frequently made. In Russia, the Baltic lands, and Poland, peasants did not possess these rights. For these unfortunates the lord's tribunal served as the court of first and last instance. The law ordered that those who dared to enter complaints with authorities against their seigniors were to be beaten and even sentenced to imprisonment at hard labor."

Today we merely fine his or her attorney his life savings.

Michael Bush has pointed out that it would be wrong to regard seigneural justice as a medieval creation that withered away in modern times. Private justice was "briskly extended in the sixteenth and seventeenth centuries." Noble Privilege, p. 162, ©1983 (Holmes & Meier Publishers, Inc.). The survivor of the European Seigneural court systems was the English manorial court that lasted until 1926. Ibid. p. 163. Private justice had remained useful to lords as a means of tenant control and the nobility's identity as the ruling class was heavily dependent upon its right to dispense seigneural justice.

In England the nobility exclusively enjoyed, until 1869 when it was extended to commoners, the right of freedom from imprisonment for debt, ibid p. 71, (which was one of the main ways of enforcing collection in England at the time of our revolution). Bush advises us that elsewhere in Europe that:

"Besides enjoying freedom from arrest prior to conviction, Hungarian and Polish nobles could deny public officials entry to their households until found guilty. Furthermore, in neither case could commoners bring actions and evidence against nobles in court. In Poland these rights were a victim of the partition. In Hungary they were retained until 1848."

Ibid, 69. Austrian nobles were immune to various writs enforcing appearance in court. In viewing all of European nobility Bush observed, p. 69:

"Of the European nobilities, those of Poland and

> Lithuania possessed the most extensive judicial privileges, enjoying immunity from the death penalty for the murder of commoners, trial by peerage in civil and criminal matters, personal and household inviolability, and freedom from the actions or evidence directly brought by commoners."

Judicial immunity may certainly be challenged under the nobility restrictions of the United States Constitution. Certainly our founders were familiar with conditions in Europe. Hamilton discussed Poland on June 18, 1787 in the Federal Convention (Ferrand, Records, supra Vol. 1 p. 290) as he reviewed the history of the states of Europe from the German Confederacy, Swiss cantons, Holland, Russia, France, and England, ibid 282-293. Madison also discussed Poland on June 28th ibid p. 459 and July 25, ibid Vol II, p. 109. Mr. Wilson discussed Polish nobles on July 17th as did Gouvenor Morris, ibid Vol. II p. 30-31. Looking through the records of the Federal Convention one is struck with the vast knowledge many of the participants had of the governments and societies of their time.

Conclusion

Finally, besides asking the court to review the judgments below so that my client and I may have some hope of relief from their unconstitutional effects, I ask this court to review the following order of Judge Dimmick of July 12, 1995, because it is so vague and general that I do not know what it means.

"Mr. Campbell is hereby ordered to refrain from filing and from threatening to file voluminous, frivolous lawsuits."
March 5 1997.

Edward Dickson Campbell
Attorney for Petitioners
Camille Fjetland and
Earth Enterprises, Inc.,
and Pro Se

APPENDIX

A. Opinions and Orders entered in conjunction with judgment sought to be reviewed.

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON Cause No. C95-0007
DISTRICT COURT ORDER OF MARCH 9, 1995.

This order is in response to Commissioner Marshall's motion to dismiss.[1] It appears from the pleadings in this cause of action that plaintiff, Camille Fjetland, has a court-appointed guardian, and thus, plaintiff lacks capacity to bring a cause of action without leave of the guardian. RCW 11.92.060(1) incorporated through Fed. R. Civ. P. 17(b). Accordingly, plaintiff is ordered to show cause why this case should not be dismissed by filing with the Court within fifteen (15) days from the date of this order, a copy of the court order terminating her guardianships, as of the date of filing, January 4, 1995. Unless plaintiff can demonstrate termination of guardianships, this case will be dismissed for lack of capacity to sue on the part of the plaintiff .[2]

The Clerk of the Court is directed to send copies of this Order to all counsel of record.

DATED this 9th day of March, 1995.

Carolyn R. Dimmick
Chief Judge

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON Cause No. C95-0007
ORDER DENYING MOTION FOR RECONSIDERATION AND DISMISSAL.

THIS MATTER comes before the Court on the defendant's motion to reconsider. The Court having considered the defendant's motion together with materials provided by counsel, hereby DENIES

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1. The Court is staying all future action pending the outcome of this issue.

2. Plaintiff companies suffer from the same incapacity.

the motion for reconsideration and DISMISSES the cause of action without prejudice.

This cause of action may be refiled by the defendant in her guardian's name or through a court appointed guardian ad litem for the purpose of filing this cause of action. This cause of action may also be refiled without leave of her guardian if and when the Washington State Court determines that Ms. Fjetland is no longer in need of a guardian.

The Clerk of the Court is directed to send copies of this Order to all counsel of record.

DATED this 24th day of March, 1995.

Honorable Carolyn R. Dimmick
Chief Judge

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON Cause No. C95-0007
ORDER GRANTING DEFENDANTS' MOTIONS FOR RULE 11 SANCTIONS

THIS MATTER comes before the Court on Defendants Cross and Walker's Motion and Defendant Commissioner Marshall's separate Motion for Rule ll sanctions. Having considered the memoranda and affidavits submitted by the parties, the Court hereby grants Defendants' motions for Rule ll sanctions.

Fed. R. Civ. P. ll requires that as representations to the Court "the claims, defenses, and other legal contentions therein are warranted by existing law ...," Fed. R. Civ. P. ll(b)(2), and "the allegations and other factual contentions have evidentiary support." Fed. R. Civ. P. ll(b)(3). Plaintiff has violated both of these sections.

Plaintiff's claims were not warranted by existing law as required by Fed. R. Civ. P. ll(b)(2). Because Plaintiff's attorney, Mr. Campbell, knew that Plaintiff had court-appointed guardians, he should not have filed suit without naming the guardians as parties to the suit. Furthermore, even after three parties filed motions to dismiss based on Plaintiff's lack of standing, Mr. Campbell maintained his position, knowing that-his client did not have capacity to sue.

In accordance with RCW 11.92.060(l) which is interpreted through Fed. R. Civ. P. 17(b), the guardian must bring an action on the part of an incompetent or the court must give its approval prior to the initiation of any legal action brought in the name of the incapacitated person. The law is clear on this issue and Mr. Campbell continued to argue that the court could not dismiss on this basis.

Additionally, Mr. Campbell argued that Commissioner Marshall's immunity did not exist because there was no personal jurisdiction over Plaintiff at the time of the guardianship petition and that she did not receive statutory notice of that proceeding. Plaintiff, however, was present with her attorney at the proceeding. Thus, Mr. Campbell's argument again violated Rule ll(b)(2) by not having any basis in law or in fact.

Furthermore, Mr. Campbell made the following factual misrepresentation and thereby presented allegations and other factual contentions without evidentiary support contrary to Rule ll(b)(3). Mr. Campbell attempted to and did in fact mislead this Court when he claimed that "[t]here is nothing in the record that requires the presumption of incapacity of Mrs. Fjetland ...." Fjetland's 2/9/95 Response at 4. Because Mr. Campbell mislead the Court, a show cause order was required, thereby escalating the expenses of an already invalid and frivolous lawsuit.

Thus, sanctions are warranted under Fed. R. Civ. P. 11, and Defendants Cross, Walker, and Marshall are hereby directed to file with the Court records of their reasonable attorney fees.

Mr. Campbell is hereby ordered to refrain from filing and from threatening to file voluminous, frivolous lawsuits.

THEREFORE, Defendants Cross and Walker's Motion for Rule 11 sanctions is GRANTED, and Defendant Commissioner Marshall's Motion for Rule 11 sanctions is GRANTED. Defendants will submit records of their reasonable attorney fees to the Court, as directed above.

The Clerk of the Court is directed to send copies of this Order to all counsel of record.

DATED this 12th day of July, 1995.

Carolyn R. Dimmick

Chief Judge

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON Cause No. C95-0007
ORDER GRANTING LONE STAR NORTHWEST, INC.'S MOTION FOR CIVIL RULE 11 SANCTIONS

This matter comes before the Court on Defendant Lone Star Northwest, Inc.'s Motion for Civil Rule 11 Sanctions. Having considered the memoranda and affidavits submitted by the parties, the Court hereby grants Defendant Lone Star Northwest's motion for Rule 11 sanctions in accordance with its earlier ruling and Order Granting Defendants' Motions for Rule 11 Sanctions entered with this Court on July 12, 1995.

THEREFORE, Defendant Lone Star Northwest, Inc.'s Motion for Rule 11 sanctions is GRANTED. Defendant Lone Star Northwest is to submit records of its reasonable attorney fees to the Court by August 25, 1995.

DATED this 15th day of August, 1995.

HONORABLE CAROLYN R. DIMMICK
Chief Judge

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON Cause No. C95-0007
ORDER GRANTING DEFENDANTS CROSS & LONE STAR'S REQUEST FOR RULE 11 SANCTIONS.

THIS MATTER is before the Court on Defendants Cross and Lone Star Northwest's request for judgment of Rule 11 sanctions. After full consideration of the parties' memoranda and affidavits, the Court hereby orders that judgment be entered against Edward D. Campbell. The following amounts are determined to be reasonable attorney fees, which do not include an amount for any work in response to Plaintiff's appeal of this case to the Ninth Circuit Court of Appeals:

In favor of Defendant Cross in the amount of $12,650.00;

In favor of Defendant Lone Star Northwest in the amount of $12,650.00.

Judgment will not be effective until the U.S. Court of

Appeals for the Ninth Circuit has rendered a decision on this case.

The Clerk of the Court is directed to send copies of this Order to all counsel of record.

DATED this 31 day of August, 1995.

CAROLYN R. DIMMICK
Chief Judge

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON Cause No. C95-0007
ORDER DENYING PLAINTIFF'S MOTION TO STAY OR MODIFY ORDER OF JULY 12, 1995

THIS MATTER is before the Court on Plaintiff's motion to stay or modify this Court's Order of July 12, 1995, granting Civil Rule 11 sanctions against Mr. Campbell.[1] After full consideration of the parties' memoranda and affidavits, the Court hereby denies Plaintiff's motion. Plaintiff has not presented any additional information that supports either the staying or the modification of that Order.

THEREFORE, Plaintiff's motion to stay or modify this Court's Order of July 12, 1995, granting Rule 11 sanctions is DENIED.

The Clerk of the Court is directed to send copies of this Order to all counsel of record.

DATED this 31 day of August, 1995.

CAROLYN R. DIMMICK
Chief Judge

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON Cause No. C95-0007
MINUTE ORDER

The following Minute Order is made and entered on the docket at the direction of the HONORABLE CAROLYN R. DIMMICK, UNITED STATES DISTRICT JUDGE:

1.Plaintiffs Camille Fjetland and Earth Enterprises, Inc. are not affected by the Order of July 12, 1995.

Consistent with this Court's orders of August 31, 1995, this Court denies plaintiff's motion to stay its order of August 15, 1995. DATED this 25th day of September, 1995.

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON Cause No. C95-0007
JUDGMENT ON DEFENDANT WALKER'S MOTION FOR FRCP 11 SANCTIONS

Multiple defendants, including defendant Walker, have filed with the court their motions for FRCP 11 sanctions. And the court, having reviewed the following:

1. Defendant Walker's Motion for FRCP 11 Sanctions;

2. Documents filed in support of defendant Walker's Motion fc FRCP 11 Sanctions, as well as documents filed in support c similar motions filed by other defendants;

3. The affidavit of Timothy D. Blue in support of defendant Walker's request for reasonable attorneys' fees and costs pursuant to the court's order granting FRCP 11 sanctions;

4. Supplemental affidavit of Timothy D. Blue in support of defendant Walker's request for reasonable attorneys' fees and costs pursuant to the court's order granting FRCP 11 sanctions, including attached invoices;

5. Materials submitted by plaintiffs' counsel Edward D. Campbell in opposition to the various motions filed by the parties for FRCP 11 sanctions.

And the court, being otherwise fully advised, it is now, therefore,

CONSIDERED, ORDERED ADJUDGED AND DECREED by the court that judgment should be entered against Edward D. Campbell in favor of defendant Walker in the sum of $19,154.12. to be effective only after the Ninth Circuit has rendered a decision on this case.

DATED this 10th day of October, 1995.
CAROLYN R. DIMMICK
Chief Judge

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON Cause No. C95-0007
ORDER RE COMMISSIONER'S JUDGMENT

This Court earlier recognized defendant Commissioner Marshall's entitlement to Fed. R. Civ. P. 11 sanctions. See Order of July 12, 1995. Pursuant to Commissioner Marshall's affidavit filed on July 28, 1995, the Court now awards attorney's fees and costs in the amount of $4,995.00.

In making awards to other defendants in this case, the Court determined that attorneys in the relevant market, Tacoma, Washington, earned between $83.50 and $111.50 per hour. The commissioner's total hours are 51, multiplied by $97.50 equals $4,972.50. In addition, costs are reimbursable in the amount of $17.50 and $5.00 for a total judgment to be entered in the amount of $4,995.00.

Judgment will not to be effective until the appeal to the Ninth Circuit Court of Appeals is decided.

The Clerk of the Court is directed to send copies of this Order to all counsel of record.

DATED this 19 day of November, 1995.

CAROLYN R. DIMMICK
Chief Judge

NINTH CIRCUIT ORDER ON REHEARING PETITION

Before: BROWNING, D. W. NELSON and FERNANDEZ, Circuit Judges.

The members of the panel that decided this case voted unanimously to deny the petition for rehearing. Judges Browning and Fernandez voted to reject the suggestion for rehearing en bane, and Judge D. W. Nelson so recommended.

The full court has been advised of the suggestion for rehearing en bane and no active judge has requested a vote on whether to rehear the matter en bane. (Fed. R. App. P. 35.)

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.

Filed December 27, 1996.

NINTH CIRCUIT'S UNPUBLISHED OPINION
Consolidated Nos. 95-35435, 95-35790, 95-35913, 95-35975, 95-36127 and 95-36254.
Rendered Without Oral Argument Allowed.
Filed October 23, 1996.
Before: BROWNING, D. W. NELSON, and FERNANDEZ, Circuit Judges.

Camille Fjetland and Earth Enterprises, Inc. appeal the district court's dismissal without prejudice of their complaint against Lone Star Northwest, et al. Campbell, also appeals the district court's imposition of sanctions. Fjetland claims that she has standing to maintain this suit, while Campbell asserts that sanctions were unreasonable. We have jurisdiction under 28 U.S.C. § 1291 and we affirm. FACTUAL AND PROCEDURAL BACKGROUND

Camille Fjetland was president and majority stockholder of B & L Trucking and Earth Enterprises, Inc. Following a string of incidents that cast doubt on Fjetland's mental and emotional stability, Karen Jones and Joe Esson, Fjetland's sister-in-law and stepson respectively, were appointed as receivers for B & L on March 2, 1993. On that same day, Fjetland -- accompanied by her counsel, Geoffrey Cross -- appeared before Pierce County Superior Court Commissioner James Marshall and signed a separate order appointing Esson as her guardian. Earth Enterprises, Inc. was administratively dissolved on April 25, 1994. Five months later, Fjetland was involuntarily committed to Western State Hospital for did not, however, terminate the guardianship. On November 3, 1994, and in compliance with the applicable statutory guidelines, Commissioner Foley appointed a new guardian ad [item. On January 4, 1995, and with the consent of Fjetland's guardian ad [item, a limited guardian was appointed by the Superior Court to pursue Fjetland's interests in certain land use matters.

On that same day, Campbell filed a complaint in federal district court on behalf of Fjetland alleging that Commissioner Marshall, Cross, Bobby Delavergne (Fjetland's suspended guardian' and G. Perrin Walker (Karen Jones's attorney) conspired to deprive Fjetland of her civil rights. The complaint also alleged antitrust and RICO claims on behalf of Earth Enterprises against Lone Star

Northwest, et al. (companies that allegedly competed with Earth Enterprises to furnish fill and gravel). Marshall and Lone Star moved to dismiss Fjetland's complaint for lack of standing and failure to state a claim under Fed. R. Civ. P. 12(b). On March 24, 1995, the district court dismissed Fjetland's complaint without prejudice for lack of standing, having found that Fjetland had a court-appointed guardian and thus lacked the capacity to bring a cause of action without leave of such guardian as required by Fed. R. Civ. P. 17 and Wash. Rev. Code § 11.92.060(1). The district court held that Earth Enterprises suffered from the same lack of capacity.

A dismissal for failure to state a claim pursuant to Fed. R. Civ. P. 12(b) is a ruling on a question of law reviewed de nova. Stone v. Travelers Corp., 58 F.3d 434, 436-37 (9th Cir. 1995). All allegations of material fact are taken as true and construed in the light most favorable to the nonmoving party. Smith v. Jackson, 84 F.3d 1213, 1217 (9th Cir. 1996).

Under Rule 17(b), the capacity of a party to sue "shall be determined by the law of the individual's domicile." The relevant law of the State of Washington provides as follows:

> When there is a guardian of the estate, all actions between the incapacitated person . . . and third persons in which it is sought to . . . benefit the estate of the incapacitated person shall be prosecuted by . . . the guardian of the estate as such. The guardian shall represent the interests of the incapacitated person in the action and all process shall be served on him or her. A guardian or limited guardian of the estate shall . . . secure court approval prior to initiating any legal action in the name of the incapacitated person. Wash. Rev. Code § 11.92.060(1).

The district court's decision to dismiss without prejudice was entirely correct. Under state law, procedural errors do not render the prior appointment of a guardian null and void. Freise v. Walker, 619 P.2d 366 (Wash. App. Ct. 1980). Commissioner Foley suspended the statutory powers of Fjetland's guardian on November 3, 1994, but she did not terminate the guardianship itself. Accordingly, the limitations on Fjetland's independent ability to sue remained intact. Because Fjetland did not prosecute this lawsuit through her guardian

ad litem and did not seek the approval of the court before filing her complaint, the district court's decision to dismiss the complaint without prejudice - permitting Fjetland to file a new complaint through her guardian ad litem or to pursue her claims independently should a court ultimately find her to be competent -- was proper.[1]

Earth Enterprises' various claims were also properly dismissed without prejudice. While Washington corporations have the power to sue, Wash. Rev. Code § 23B.03.020, "[a]ll corporate powers shall be exercised by or under the authority of . . . its board of directors . . . ." Wash. Rev. Code § 23B.08.010(2). See Beall v. Pacific Nat. Bank, 347 P.2d 550 (Wash. 1959) (corporations may function only through their boards of directors. officers, and agents). Thus, Earth Enterprises' power to sue hinges upon Fjetland's capacity

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1. We note that Fjetland's underlying civil rights claims are without merit. Her vague and conclusory allegations of conspiracy fail to state a claim under either 42 U.S.C. § 1983 or 42 U.S.C. § 1985. See Bray v. Alexandria Women's Health Clinic, 506 U.S. 263, 267-68 (1993)(§ 1985); Griffin v. Breckenridge, 403 U.S. 88, 102 (1971) (§ 1985); Mosher v. Saalfeld, 589 F.2d 438, 441 (9th Cir. 1978), cert. denied, 442 U.S. 941 (1979) (§ 1983); Williams v. Sumner, 648 F. Supp. 510, 512-13 (D. Nev. 1986) (§ 1983).

In addition, Commissioner Marshall enjoys absolute judicial immunity when he performs judicial or adjudicatory tasks. Forrester v. White, 484 U.S. 219 (1988); Pierson v. Ray, 386 U.S. 547, 553-54 (1967). This immunity disappears only when the judge acts in the "complete absence of all jurisdiction." Mireles v. Waco, 502 U.S. 9, 12 (1991); Stump v. Sparkman, 435 U.S. 349, 35657 (1978). Despite procedural errors in the guardianship proceedings, Fjetland had actual notice of these proceedings. Accordingly, failure to comply with statutory procedures does not affect a Washington court's "subject matter jurisdiction, personal jurisdiction, and the inherent power and duty to appoint a guardian to protect" an incompetent. Freise v. Walker, 619 P.2d 366, 369 (Wash. Ct. App. 1980). Furthermore, Commissioner Marshall clearly had subject matter jurisdiction over the guardianship proceedings of March 2, 1993. See Wash. Rev. Code. § 2.24.040(9) (Superior Court Commissioners may "hear and determine ex parte and uncontested civil matters of any nature").

to direct such action. Under the guardianship, Fjetland lacked this power. Therefore, the district court correctly concluded that Earth Enterprises suffered from the same lack of capacity as Fjetland did.

SANCTIONS

Orders imposing Rule 11 sanctions are reviewed for an abuse of discretion. Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 405 (1990); In re Keegan Management Co. Sec. Litig., 78 F.3d 431, 433 (9th Cir. 1996). "A district court abuses its discretion in imposing sanctions when it bases its decision 'on an erroneous view of the law or on a clearly erroneous assessment of the evidence.'" Mark Indus. Ltd. v. Sea Captain's Choice. Inc., 50 F.3d 730, 732 (9th Cir. 1995) (quoting Cooter & Gell, 496 U.S. at 405).

The district court found that Fjetland's claims did not have any basis in law or fact as required by Fed. R. Civ. because (1) Campbell knew that Fjetland had a court-appointed guardian and accordingly knew that she did not have capacity to sue without the guardian's involvement or the court's approval, and (2) Campbell knew that Fjetland was present at the March 1993 guardianship proceedings and thus received notice of such proceedings adequate to defeat her contention that Commissioner Marshall lacked personal jurisdiction over Fjetland. The court also found that Campbell made a factual misrepresentation in violation of Rule ll(b)(3) when he asserted that there was "nothing in the record that requires the presumption of incapacity of Mrs. Fjetland." Campbell was assessed $49,449.12 in sanctions, representing the sum of defendants' reasonable attorneys' fees.

The district courts decision to impose these sanctions upon Mr. Campbell was based neither upon "an erroneous view of the law" nor upon "a clearly erroneous assessment of the evidence." Mark Indus. Ltd., 50 F.3d at 732. Accordingly, we affirm the sanctions in their entirety.

On appeal, defendants ask this court to impose additional sanctions upon Campbell pursuant to Fed. R. App. P. 38. We conclude that additional sanctions are not warranted in this case.

B. Companion Case Opinions

WASHINGTON STATE SUPERIOR COURT, PIERCE

COUNTY

Guardianship of Camille Fjetland, Cause No. 93-4-00307-5

PETITION FOR APPOINTMENT OF GUARDIAN OF PERSON AND ESTATE OF INCOMPETENT

COMES NOW Joe Esson and petitions the Court pursuant to ROW 11.88 to issue Letters of Guardianship of the person and estate of Camille Fjetland to Joe Esson, stating for his Petition as follows'

1. That Camille Fjetland has granted a Power of Attorney to Joe Esson, a copy of which is attached, prior to her disability and is currently acting in her stead but feels that a Court appointed guardian is appropriate.

2. That Camille Fjetland is currently under psychological treatment and is in need of a general guardian.

4. That Camille Fjetland is mentally incompetent.

5. That Camille Fjetland has the following assets and property:

(a) Corporate Stocks $200,000.

(b) Real Estate $200,000.

6. That it is necessary that a general guardian be appointed to conserve her assets as she is incapable to handle them at this time.

7. To the best of Petitioner's knowledge, there is not in any state at this time a guardian or limited guardian for the person or estate of Camille Fjetland.

6. That Petitioner requests that Joe Esson who resides at 19430 SE 267th, Kent, WA 98042, Washington, be appointed guardian of the person and estate of Camille Fjetland.

7. The following are the names and addresses and nature of the relationship as far as it is known or can be reasonably ascertained by Petitioner, of the persons most closely related by blood or marriage to Camille Fjetland:

Mrs. Keller, Aloha, Oregon Mother

Sophia Schaffer, Aloha, Oregon Daughter

Heather Schaffer, Aloha, Oregon Daughter

8. The following is the name and address of the person or institution having the care and custody of at this time: none.

9. The appointment for the Guardian of the person and estate

of Camille Fjetland is sought because she is incapable of attending to her personal and financial affairs.

WHEREFORE, Petitioner have set forth the required facts above, prays for relief as follows:

That Joe Esson be appointed Guardian for the person and estate of Camille Fjetland.

2. That a Court appoint a Guardian ad Litem to represent the best interest of Camille Fjetland pursuant to RCW 11.88.090 and to prepare a report for the Court as required therein.

DATED this 2nd of March, 1993.

/S/ Geoffrey Cross, WSBA #3089

Attorney for Petitioner

STATE OF WASHINGTON)

COUNTY OF PIERCE)

JOE ESSON, being first duly sworn, deposes and says:

That he is the Petitioner herein. That he has read the foregoing PETITION FOR APPOINTMENT OF GUARDIAN OF PERSON AND ESTATE OF INCOMPETENT, knows the contents thereof, and believes the same to be true.

/S/ Joe Esson

Subscribed and sworn to before me this 2nd day of March, 1993.

/s/ ??

Notary Public in and for the

State of Washington, residing at Tacoma.

My commission expires _____

I consent to the above proposal. /a/ Camille Schaffer??

WASHINGTON STATE SUPERIOR COURT, PIERCE COUNTY Guardianship of Camille Fjetland, Cause No. 93-4-00307-5

ORDER APPOINTING GUARDIAN OF PERSON AND ESTATE

[Apparently actually signed on March 2, 1993.]

Entered March 4, 1993

The Petition of Joe Esson, praying that he be appointed Guardian of the person and estate of Camille Fjetland, coming on regularly for hearing this day before the undersigned Commissioner of the above entitled court, and the court having been fully advised

by the files herein, the Court finds and orders as follows:

The matters set forth in the Petition are true and the Petition sets forth facts essential to give this court Jurisdiction over the person and estate of Camille Fjetland; that a Guardian is required for Camille Fjetland by reason of her incapacity, and that he is qualified and entitled to Letters of Guardianship; Now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that Joe Esson be and he is hereby appointed Guardian of the person and estate of Camille Fjetland, and that Letters of Guardianship shall be issued to him on the filing of an Oath and a bond in the sum of $ -0-

DONE IN OPEN COURT this 2 day of March, 1992.

James M. Marshall
Court Commissioner

Presented by
Geoffrey Cross, WSBA #3089
Attorney for Guardian
There also appears to be some signature above crosses which may be *Camille Fjetland.*

WASHINGTON STATE SUPERIOR COURT, PIERCE COUNTY Guardianship of Camille Fjetland, Cause No. 93-4-00307-5

Hootman report of no hearing of record on March 2, 1993
State of Washington)
County of Pierce)

I, CHRIS J. HOOTMAN, being over the age of 18, do hereby make the following statement:

That on July 19, 1995 I received notification from Vernon & Associates that Edward D. Campbell, Esq. wished to obtain a transcript regarding this matter for March 2, 1993. After checking my steno notes for that day, and having found none that pertain to this matter, I am concluding that this indeed was an ex-parte hearing in which papers may have been signed, but there was nothing put on the record stenographically.

Also, I checked with the Clerk's Office on July 21, 1995 to verify my findings and was advised that there are no Clerk's Minutes for March 2, 1993, which I believe further illustrates that there was

nothing put on the record that day in this matter.

FURTHER YOUR AFFIANT AN SAYETH NAUGHT

Signed and sworn to before a notary on July 27th and filed August 4, 1995.

WASHINGTON STATE SUPERIOR COURT, PIERCE COUNTY Guardianship of Camille Fjetland, Cause No. 93-4-00307-5

Schultz report of no hearing of record on March 2, 1993

State of Washington)

County of Pierce)

I, KIMBERLY SCHULTZ, being over the age of 18, do hereby make the following statement:

That on July 27, 1995 I received notification from Vernon & Associates Court Reporters that Edward D. Campbell Esq. wished to obtain a transcript regarding this matter for March 2, 1993. I worked in Room 117 before Commissioner Marshall that day and having checked my steno notes for that day, I find nothing regarding that matter. If there was something signed that day it must have been ex-parte. I did, however, find a case entitled Karen Fjetland v. B. & L. Trucking & Construction, Inc., et al, Cause No. 93-2-00493-7 which was stricken from the docket with a line through it, with nothing heard that day on that matter either.

I understand that these guardianship matters are normally heard in Room 100 and have been advised and have seen the Affidavit of Chris J. Hootman, the reporter for Room 100 that day, wherein she states that she also doesn't have any steno notes for that matter for that day, presided over by Commissioner Haarmann.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Signed and sworn to before a notary on July 28, 1995, and filed on August 4, 1995.

WASHINGTON STATE SUPERIOR COURT, PIERCE COUNTY Guardianship of Camille Fjetland, Cause No. 93-4-00307-5

VERBATIM REPORT OF PROCEEDINGS, October 28, 1994,

BE IT REMEMBERED that the above-entitled and numbered cause

came on for hearing before the Honorable MEAGAN M. FOLEY, Court Commissioner, on the 28th day of October, 1994.

THE COURT: First, you need to understand, this is a very vital issue. Until the Court is satisfied that Ms. Fjetland was personally served with the petition for guardianship, and all other relevant documents, if that did not occur, this matter has to be vacated.

MR. HICKMAN: I think the Court under the statute, 11.88.120, before it removes a guardian, or dismisses a guardianship, has the authority to appoint a guardian ad litem to investigate the allegations that are being made by Ms. Fjetland.

THE COURT: I, certainly, agree with that, and I don't mean to cut you off. What we are getting here is a more basic issue. Was she served with the guardianship petition? Just because I appoint a guardian ad litem does not necessitate or alleviate the due process requirements of service upon her. She, at that juncture, was alleged to be incapacitated. She was entitled to be served with all of the pleadings and entitled to retain an attorney; and under the notice requirement of the statute, that is a provision that has to be pointed out to her. That if she cannot afford an attorney, one would be appointed for her at county expense.

THE COURT: I am having difficulty finding an affidavit of service in the file.

MR. CROSS: She signed the petition and she signed the appointment and was in court. I did not give her a summons. I will confess to that procedural error.

THE COURT: Mr. Campbell, it does appear as if your client signed off on the petition which acknowledges, certainly, awareness of what was going on in receipt of the petition.

MR. CAMPBELL: Receipt of a petition is not sufficient. The receipt of the notice actually spells out exactly what may happen. The guardianship is an absolute necessity.

THE COURT: That's the job of the guardian ad litem to do that.

MR. CROSS: I'm in the middle of this mess, and no notice was given to her. She did sign the Petition. She signed the Order of Appointment, and she did talk with the Court Commissioner when

a guardian was appointed, but I did not give a statutory notice. I'm in the middle of this mess. I just want the Court to be clear as to what did happen.

MR. CAMPBELL: I don't believe a guardian ad litem was appointed for over a month.

THE COURT: I disagree with you there. This matter was filed on March 4, 1993.

MR. CAMPBELL: A guardian ad litem was appointed on April 23.

MR. HICKMAN: Your Honor, I found the relevant document. An Order appointing an independent guardian ad litem was signed on April 22, 1993. That was originally Diana Kiesel. She, evidently, on April 23, indicated that she could not do that, and the next person on the list of the guardian ad [item's was appointed on April 23, 1993.

THE COURT: Well, just a moment. This does seem to be a little bit odd. The petition for appointment of guardian, the person in estate, was filed on March 2, 1993.

MR. CROSS: '92.

THE COURT: The filing stamp from the clerk's office reflects March 2, 1993.

MR. CAMPBELL: Yes, that's correct, Your Honor.

THE COURT: The Order appointing guardian of person in estate was signed on March 2, 1992 by Commissioner Marshall. The filing stamp reflects March 4, 1993, so I am assuming Commissioner Marshall just didn't notice that the wrong year was put. That Order appointing guardian was signed by Ms. Fjetland and Mr. Cross. So the Order appointing guardian and person in estate was signed at the same time that the Petition was filed, which procedurally is incorrect. Then there was, on April 22, 1993, an Order appointing an independent guardian ad [item, and that appointed Diana Kiesel; and then on the following day, there wee an Order appointing alternative guardian ad [item, and it says next on the list of GAL's which is odd language. You don't do that. You have to appoint someone from the registry and a specific named person. I am not certain how that happened.

And then there is the Declaration of Camille Fjetland filed

on April 26, 1993. Apparently, this was a request to have her guardian changed. And Mr. Cross did make a motion to change the guardian, but, unfortunately guardianships cannot be done by agreement of the parties. And then there is Mr. Lievense's Report. I suppose at this point in time, because Ms. Fjetland signed off on the Petition for Guardianship, which is very unusual, that I am going to find that she was given, certainly, notice of the proceedings, but then the issue becomes one of has this proceeded in a procedurally correct fashion?

Again, you cannot do a guardianship by agreement. If the person is truly incapacitated and loses all their rights, that suggests to the Court that they are not capable, or have the capacity to sign the agreement saying I am incapacitated. All of that sounds rather odd, and there's probably a better way to put it but. And now, I suppose, Mr. Lievense, I need to seek advice from you. Did you notice some of these procedural problems in the time period that elapsed?

MR. LIEVENSE: Your Honor, all of those things were the way they were at the time. It seemed that from listening to the medical opinions at the time that-

THE COURT: Mr. Lievense, what do you mean they were the way they were at the time?

MR. LIEVENSE: That's right. There was a Court Order starting the guardianship.

THE COURT: The guardianship statute, as it now exist--and correct me if I am wrong--went into affect July of '91.

MR. CAMPBELL: That's correct, Your Honor.

THE COURT: The guardian ad litems are required to comply with all of the requirements.

MR. LIEVENSE: By the Court order, my obligation was to help to select a replacement guardian to Mr. Esson. That is the sum total of my obligation. Right off of the Order, that's what I did. I had made a rather lengthy report about this.

THE COURT: Have you been given any of the pleadings that brought to your attention some of the procedural problems.

MR. LIEVENSE: No, I was given nothing other than the Order of Appointment.

THE COURT: So your assumption was that your roll was

simply to determine whether or not a substitute guardian should be appointed by the Court as opposed to the issue of appointment of a guardian having already been determined.

MR. LIEVENSE: Yes.

THE COURT: Mr. Hickman?

THE COURT: I want to hear from Mr. Lievense. Again, I understand that your initial roll is somewhat limited. You assumed that a guardian was validly appointed, and all your investigation entailed was a substitute guardian, but did any of your investigation confirm or deny the incapacity with regard to the--

MR. LIEVENSE: Well, there is two things. One of them is two different letters that I attached to my report at the time. It is from a Robert Falk that believed that she was incapable of handling her financial affairs, and personal ones, at the time. In my estimation, the two different days that I met with her, she was totally incapable of dealing with her personal life, as well as her financial life, at the time. What she may have been like a week before or week after, I can't speak to that. But at the time, she definitely needed a guardian.

MR. HICKMAN: And I have submitted to the Court her records from Western State which indicated off and on admissions to Western State for most of 1994. And as indicated now, she's currently on a 180-day less restrictive discharge from Western.

THE COURT: Mr. Campbell, I'll hear from you before I rule.

MR. CAMPBELL: Yes, Your Honor. She is on a less restrictive situation because I intervened at Western State and kept them from keeping her on 180 days on a bi-polar problem. The problem happened to be something much simpler. She went to Puget Sound Hospital. She was on a less restrictive because I agreed on a less restrictive, a very simple matter, chemical dependency. She is now on a program where she has a counselor once a week on chemical dependency; does her program; that's fully covered by the psychiatrist. A psychiatrist, who I may add, also saw her before.

As far as Dr. Falk is concerned, Dr. Falk filed two Affidavits. Another one of which is in the file which was made within about two or three weeks, within about a month, before he made the second affidavit saying that she was quite competent. So

we have affidavits both before and after. Furthermore, the continued restraint on her, and the continuation of this guardianship, is a severe economic threat to her future, and we pointed this out on a number of things. As far as these Western State things, I haven't been served with copies of any of them, so I don't know what they say. I have not been served with them. But I do know one thing that if I hadn't had intervened, the guardian would have let her go to Western State for 180 days-

THE COURT: I want to stop you there, Mr. Campbell. 71.05 does not grant, nor 11.88, grant any guardian the authority to involuntary detain anyone. This Court makes that determination. So blaming all of that on the guardian is absolutely an effort of futility. It does not happen and cannot happen. Nobody detained anyone involuntarily in the hospital. The guardian does not have that authority.

MR. CAMPBELL: Let me put it this way. The petition was pending and the guardian had not taken any action to do anything other than accede to it.

THE COURT: The guardian really has no real choice. It takes on a life of its own, unfortunately.

MR. CAMPBELL: Anyway, back to the matter. I believe this is strictly a jurisdictional matter. The notice is a jurisdictional requirement, an absolute jurisdictional requirement. If it is not served, then the guardianship is null and void. It's an absolute requirement. The legislature made it very clear that that notice had to be served, and that was something a month before the guardian ad [item, or a month and a half before, the guardian ad litem even became involved. And that was when she was supposed to receive it. As far as the other matters, she is subject to the equity jurisdiction the Court has between the parties.

THE COURT: The Court should let everyone know that I am not particularly concerned with regard to any jurisdiction exercised under 71.05. If the parties read that statute, anyone that may be detained voluntarily or involuntarily is presumed competent to handle their affairs. Only cases under 11.88, the guardianship statute, only the superior court under that cause of action, determines, essentially, the competency.

However, everyone has referenced this Court's equitable powers. I have a concern here, from what I have heard, that suggests that a guardianship may be in Ms. Fjetland's best interest. The problem is that there is somewhat of a tortured procedural history in this matter, but that does not necessarily necessitate that this Court just vacate everything and ignore the very real possibility that Ms. Fjetland may need a guardianship.

What I am going to do is, essentially, suspend the powers of the guardian at this point in time. I'm going to reappoint a guardian ad litem, and what I am going to try to do is, even though Mr. Lievense is a very fine attorney, and does a very good job as guardian ad litem, I don't want Ms. Fjetland to walk out of here thinking that I am reappointing the same people that have been previously involved. I want to give her a fresh shot at all of this. I am going to reappoint a new guardian ad litem. I will list four names the parties can pick from: Robin Balsam, Diana Kiesel, Jim Orlando, and Patricia Smith to serve in this capacity. None of these individuals, presumably, have been involved in this case before. They don't have any preconceived notions or ideas with regard to the capacity or incapacity of Ms. Fjetland. I will immediately appoint a guardian ad litem which, in some respects, suspends some of Ms. Fjetland's rights. I understand that. This will be conditioned upon a new and amended petition for guardianship being filed by no later than 4:30 on Monday. The Court will then reappoint, of course, as I have already said, one of the four named individuals, and this will now proceed on the procedural tracks set forth by the legislature under 11.88.

I understand Ms. Fjetland may not be happy with regard to that. But this is not unlike anyone else coming in and summarily filing a petition for guardianship and appointing a guardian ad [item. However, this will now have to proceed in the correct time lines now required by the legislature.

MR. CAMPBELL: Your Honor, there are seven to ten parcels of land that threaten to be lost because of not paying the taxes. There are a number of other-

THE COURT: The guardian ad litem will immediately investigate that situation, and if it can be rectified, it will be rectified

by the guardian ad [item. And the four names that I just gave you are individuals that know what to do in this situation.

MR. CAMPBELL: And is it Your Honor's position, and I'm trying to understand your order that you are actually ordering the commencement of a new action?

THE COURT: I have sufficient concerns and I can't ignore them, Mr. Campbell, that perhaps a guardianship still is needed.

MR. CAMPBELL: Under a different cause number or under the same cause number?

THE COURT: I will allow the same cause number. I don't see any reason to have to file and pay another filing fee.

MR. CAMPBELL: It seems to me if there is no jurisdiction under this cause number-

THE COURT: As you said so yourself, Mr. Campbell, this Court has equitable powers, and that's what I am exercising.

MR. CAMPBELL: The Court has never indicated the equitable powers extended to redoing the guardianship roll.

THE COURT: Mr. Campbell, I don't think you understand my ruling. I am not summarily appointing a guardian ad litem as previously occurred. What I am doing is trying to put this in a posture where it should have been approximately one year ago.

MR. CAMPBELL: Do we have a right to a jury trial over the issue of whether she needs a guardian?

THE COURT: The guardian ad litem will explain all of those rights which include a right to a jury trial. Mr. Campbell, I have made my decision.

MR. CAMPBELL: Can we put this on a fast-track calendar.

THE COURT: Mr. Campbell, I would suggest that you review 11.88, as well, to find out what needs to be done, but right now, this is now in the hands of the guardian ad [item.

MR. CAMPBELL: Is it a ten-day rule on appeal from the commissioner's rulings?

THE COURT: I don't give you legal advice, Counsel.

WASHINGTON STATE SUPERIOR COURT, PIERCE COUNTY Guardianship of Camille Fjetland, Cause No. 93-4-00307-5

VERBATIM REPORT OF PROCEEDINGS, before Meagan M. Foley, Commissioner on November 3, 1994.

THE COURT: The guardianship of Camille Fjetland. This is set for presentation only, as I understand it. This is Cause No. 93-4-00307-5.

MR. HICKMAN: Good morning, your Honor. Thank you for taking us on at the end of your docket.

For the record my name is John R. Hickman, and I represent Bobby J. DeLavergne who is the court-appointed guardian on behalf of Camille Fjetland.

By way of background, we were before the Court on Friday.

THE COURT: I do recall this case. I assume that we're here for presentation. order, Mr. Hickman?

Do you have a proposed

MR. HICKMAN: Yes. Your Honor, I have a proposed order on show cause and I also have an order appointing independent guardian ad litem.

As of this date Mr. Campbell and have I not been able to agree on a guardian ad [item. An amended guardianship petition was filed Friday pursuant -- or Monday -- pursuant to your order, and I didn't want to present any ex parse orders until today regarding that issue. So I actually have the order appointing a guardian ad litem and an order on show cause.

I would ask the Court to appoint the guard ad litem. I would ask Robin Balsam not be appointed because I have a conflict of interest in that she and I represent the same individual in another guardianship case, and that may create an appearance of unfairness to Mr. Campbell. So I would ask you to pick one of the three that you suggested.

I apologize to Mr. Campbell. I thought my staff had faxed him copies of this stuff, and they did not. So he has not had a chance to review this until this morning, although I did read him the proposed order over the phone when we talked on Monday in setting up this hearing.

THE COURT: Mr. Chambers, I'll hear from you.

MR. CAMPBELL: That's Campbell, your Honor.

THE COURT: Campbell. Excuse me.

MR. CAMPBELL: Edward Campbell. I would like to go on the record now.

Apparently in the Friday hearing there were some evidence before the Court that was not made available to counsel for Mrs. Fjetland including some papers from Western State and Puget Sound Hospital. Those have still not been made available to counsel and apparently are not even in the court file. So to the extent that this order is based on matters that were not before the Court and not in the court file, we object to the order.

Secondly, as I understand the Court's order apparently the Court has ruled either, one, the failure to give the five-day notice in the form required by RCW 11.88.030(4)(a)(b) is not jurisdictional; or, two, some waiver occurred by agreement of the petitioner and the ward by the ward's supposed and not admitted signature consenting to the petition and the supposed, not admitted, signature on the -

THE COURT: Mr. Campbell, the purpose of this hearing -- and it's almost noon and I've been on the bench continuously since 9:30 in the morning -- is for presentation only. Do you have a proposed order to present to the Court, or do you agree with the substance of Mr. Hickman's proposed order?

MR. CAMPBELL: I do not agree with the substance. I would like for the record to enter my objections and why the objections are there.

THE COURT: What objections specifically with the language found in the order on show cause?

MR. CAMPBELL: If I might complete. I've written it out. It's very short.

THE COURT: Mr. Campbell, I have given you every benefit here. You had a case last Friday that wasn't even docketed. You were advised as to how docket cases. You failed to do so. The Court nonetheless heard this matter.

MR. CAMPBELL: Your Honor, I object that I have not been -

THE COURT: The Court is now trying -

MR. CAMPBELL: -- given proper notice of presentation of the order. I object that the order does not -- the order takes away -- does not do anything about certain very fundamental things. One,

that Ms. Fjetland's civil rights have not been restored to her; that there is nobody to protect her civil rights; that she has become totally disenfranchised by this order; that she has no way to get any money, get to her savings account, get money for food, get any money for anything else; that the guardian has apparently been suspended but there's no provision -is his bond suspended or is it not suspended? If there was a zoning hearing in the city of Tacoma in approximately two or three weeks and there is no one with any authority whatsoever to represent Ms. Fjetland and her private lands in that hearing, even though she agrees to it.

THE COURT: Well, Mr. Campbell -

MR. CAMPBELL: These are all things -- and under the -

THE COURT: -- Mr. Campbell -

MR. CAMPBELL: May I finish?

THE COURT: No, you may not. I made it very clear to you what my ruling was last Friday. I know you take exception to it. I know you're unhappy with it. But that is my ruling. All right. In addition, I advised you specifically, and now you seem to be bringing it up again, with regard to who is going to be acting on behalf of Mrs. Fjetland now that her rights have been suspended in some respects.

What I am doing is trying to put this back in a fashion and status quo it should have been in over a year ago. This is not unlike any other filing of a petition for guardianship in which, once that has been filed, a guardian ad litem is appointed and the guardian ad litem does have certain temporary duties and powers. And if you would familiarize yourself with 11.88 you would be aware that there are certain duties and powers that the guardian ad litem has.

There is no guardian at this time per say because the guardian ad litem -- this is now in the hands of the guardian ad [item. And because the parties couldn't agree as to who that will be, I simply appointed Diana Kiesel to serve in that respect.

What I'm trying to make abundantly clear is that I'm not making any determination as to whether or not Mrs. Fjetland is in fact incapacitated. That is the obligation of the guardian ad litem to investigate this situation and make a recommendation to the Court. I can't fast-forward this situation any further than it does under the

statute.

MR. CAMPBELL: Is it the Court's position -

THE COURT: What I also want to make –

MR. CAMPBELL: That her civil rights have been returned to her –

THE COURT: No. Mr. Campbell.

MR. CAMPBELL: -- for the interim period?

THE COURT: Mr. Campbell, the filing of a petition for guardianship suspends that in some respects. Please review 11.88.

MR. CAMPBELL: I have reviewed it, your Honor. And the only thing the guardian ad litem may do is go for emergency medical treatment. It does not suspend her rights until she has a jury trial. And therefore -

THE COURT: I'm not sure I understand and appreciate your concerns. I have signed both orders as presented. They do seem to appear to be in conformity with what the Court ruled. Thank you both. Court is at recess.

(Whereupon, the proceedings were concluded.)

WASHINGTON STATE SUPERIOR COURT, PIERCE COUNTY Guardianship of Camille Fjetland, Cause No. 93-4-00307-5

ORDER ON SHOW CAUSE

THIS MATTER having come before the above-entitled court for hearing by way of motion of the alleged incompetent CAMILLE FJETLAND, by and through her attorney of record, EDWARD D. CAMPBELL, for a motion to dismiss the above entitled guardianship and for restraining orders against the court appointed guardian, BOBBIE J. DELAVERGNE. Present at the motion was BOBBIE J. DELAVERGNE, represented by and through his attorney of record, JOHN R. HICKMAN, the original guardian ad litem for the alleged incompetent, MACK LIEVENSE, and the original attorney of record for the alleged incompetent, GEOFFREY C. CROSS.

The court having heard the oral argument of the parties, having read the written declarations of the above-named parties as well as a reviewing the records and files contained herein, wherefore, it is hereby

ORDERED, ADJUDGED AND DECREED that pursuant to the court's powers at law and in equity that the statutory powers of the guardian, BOBBIE DELAVERGNE are hereby suspended, and it is further

ORDERED, ADJUDGED AND DECREED that in order to cure any procedural deficiencies in the filing and serving of the original petition for appointment of guardian, BOBBIE DELAVERGNE, over the alleged incompetent that a new or amended petition utilizing the same or different cause number be filed with Pierce County Superior Court by the end of the business day of October 31, 1994, and it is further

ORDERED, ADJUDGED AND DECREED that pursuant to the filing of said petition for guardianship as stated above, that an intermediate guardian ad litem shall be appointed on behalf of the alleged incompetent and the attorneys to choose from 4 individuals who are qualified and recommended by the court specifically, ROBIN BALSAM, JIM ORLANDO, PAT SMITH, and DIANA KIESEL.

DONE IN OPEN COURT 1st day of October, 1994.

MEGAN M. FOLEY
Court Commissioner

WASHINGTON STATE SUPERIOR COURT, PIERCE COUNTY Guardianship of Camille Fjetland, Cause No. 93-4-00307-5

ORDER APPOINTING INDEPENDENT GUARDIAN AD LITEM

THIS MATTER coming upon the application of BOBBIE DELAVERGNE, petitioner, for the appointment of a guardian for CAMILLE FJETLAND. The court having reviewed the petition and files contained therein, wherefore, it is hereby

ORDERED, ADJUDGED AND DECREED that Diana Keisel be appointed Guardian Ad Litem for Camille Fjetland to report to the court as to the merits of the Petition for Guardianship pursuant to RCW 11.88.090.

Done in Open Court this 3 day of Nov. 1994

Meagan M. Foley

Court Commissioner

WASHINGTON STATE SUPERIOR COURT, PIERCE COUNTY Guardianship of Camille Fjetland, Cause No. 93-4-00307-5

ORDER CLARIFYING DUTIES OF GUARDIAN AD LITEM AND EXTENDING TIME FOR FINAL HEARING.

THIS MATTER having come on before this Court upon the motion of Diana Lynn Kiesel, guardian ad [item; Edward D. Campbell, attorney at law, represented Camille Fjetland; John Hickman, attorney at law, represented Mr. DeLavergne, guardian; and the Court having reviewed the files and records, heard arguments of counsel and being fully advised; now therefore, it is hereby

ORDERED that Diana Lynn Kiesel , guardian ad litem, shall proceed with her investigation although issues of jurisdiction are pending in the Court of Appeals; it is further

ORDERED that Diana Lynn Kiesel, guardian ad litem, may interview Camille Fjetland without Edward D. Campbell present, it is further

ORDERED that Diana Lynn Kiesel, guardian ad litem, may retain Stephen Klein, Ph.D. and Sound Options, Inc. to perform independent evaluations on Camille Fjetland, and she shall cooperate with these evaluations; it is further

ORDERED that the statutory time constraints required for final hearings are extended because of the nature and complexity of the investigation necessary.

DONE IN OPEN COURT this 4th day of January, 1995.

Paul M. Boyle
Court Commissioner

WASHINGTON STATE SUPERIOR COURT, PIERCE COUNTY Guardianship of Camille Fjetland, Cause No. 93-4-00307-5

ORDER

THIS MATTER having come on before the Court upon the motion of Diana Diesel, guardian ad litem; Chris Quinn-Brintnall, Deputy Prosecuting Attorney, being present; Edward Campbell,

attorney for Camille Wetland, being present; and John Hickman, attorney for Bobby DeLavergne, prior guardian, being present; and the Court having heard oral arguments of counsel and reviewed the entire Court file, including pleadings submitted regarding the present motion; and the Court being fully advised; now, therefore, it is hereby

ORDERED, ADJUDGED AND DECREED that the motion to change venue is hereby denied; it is further

ORDERED, ADJUDGED AND DECREED that the motion of the guardian ad litem to withdraw is hereby denied; it is further

ORDERED, ADJUDGED AND DECREED that this matter should be set for trial and any further motions shall be heard by the Judge pre-assigned to this case; it is further

ORDERED, ADJUDGED AND DECREED that the sole duty of the guardian ad litem shall be to investigate and report to this Court. Unless the Superior Court expands the duties of the guardian ad litem, she shall have no duties to supervise the business/personal affairs of Camille Wetland; it is further

ORDERED, ADJUDGED AND DECREED that if the guardian ad litem is served with civil litigation arising out of her good faith performance of her duties, she is entitled to a defense at public expense as outlined in the attached Memorandum of the Office of Prosecuting Attorney of Pierce County dated March 1, 1995.

DONE IN OPEN COURT this 18 day of April, 1995.

Paul M. Boyle
Court Commissioner

WASHINGTON STATE SUPERIOR COURT, PIERCE COUNTY Guardianship of Camille Fjetland, Cause No. 93-4-00307-5

ORDER ON PETITION FOR DISMISSALS OF THE GUARDIANSHIP AND GUARDIANSHIP PETITION AND SETTING FINAL ACCOUNTING AND CONSIDERATIONS ON DISCHARGE

The undersigned judge of the above entitle court, having been familiar with the files and records of this proceeding, and

having heard and considered the presentations of the petitioner through her attorney, Edward D. Campbell, and the Guardian ad Litem, Diana Kiesel, and the suspended guardian Bobby Delavergne having been notified of these proceedings, and finding no good cause for the continuation of the guardianship petition of Bobby Delavergne, and good cause for the dismissal of the present guardianship of Camille Fjetland, and that the court has previously entered an order approving the fee of Diana Lynn Kiesel, and that Gary G. Weber has declined to serve as the third trustee on the C.P.B.& L. Trust but that Mr. Kenyon E. Luce, an attorney know to the court, has agreed to serve as that trustee, and the court having to conclude matters herein, now therefore:

IT IS ORDERED that Kenyon E. Luce is appointed as the third Trustee in the place and stead of Gary G. Webber and Kay Keller, the mother of Camille Fjetland, with all rights, powers and obligations as granted therein to Kay Keller, and

IT IS ORDERED that the guardianship proceedings over Camille Fjetland, and the petition for the appointment of a guardian for the person and estate of Camille Fjetland, are herewith dismissed; and further,

IT IS ORDERED that Bobby Delavergne shall file and serve upon Edward D. Campbell, attorney for Camille Fjetland, a final inventory and a final accounting by May 31, 1996, and that any interested party shall have thirty days thereafter to file any objections she or he may have to the discharge of said Bobby Delavergne and the exoneration of the bond number U719489 given by United Pacific Insurance Company on May 26, 1993, for the faithful performance of said guardian's duties.

Done this 5th day of April, 1996.

Honorable Donald H. Thompson

Judge

ORDER ON REHEARING IN NINTH CIRCUIT

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

CAMILLE FJETLAND et al v. LONE STAR NW et al,

Consolidated No's. 95-35435, 95-35790, 95-35913, 95-35975, 95-36127 and 95-36254
ORDER (On Rehearing)
Before: BROWNING, D. W. NELSON and FERNANDEZ, Circuit Judges

The members of the panel that decided this case voted unanimously to deny the petition for rehearing. Judges Browning and Fernandez voted to reject the suggestion for rehearing en banc, and Judge D. W. Nelson so recommended.

The full court has been advised of the suggestion for rehearing and no active judge has requested a vote on whether to rehear the matter en banc. (Fed. R. App. P. 35.)

The petition for rehearing is denied and the suggestion for rehearing en banc is rejected.
Filed December 27, 1996

JUDGMENTS

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON
JUDGMENT OF MARCH 24, 1995

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that this action is DISMISSED WITHOUT PREJUDICE.

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON
JUDGMENT, OCTOBER 10, 1995.

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IS ORDERED AND ADJUDGED that judgment is hereby

entered against Edward
D. Campbell in favor of defendant G. Perrin Walker in the amount of $19,154.12 to be effective only after the Ninth Circuit has rendered a decision on this case.

UNITED STATES DISTRICT COURT WESTERN DISTRICT OF WASHINGTON
JUDGMENT IN A CIVIL CASE November 11, 1995

Decision by Court. This action came to trial or hearing before the Court. The issues have been tried or heard and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that judgment is hereby entered against Edward D. Campbell in favor of defendant Commissioner Campbell [sic.] in the amount of $4,995.00, to be effective only after the Ninth Circuit has rendered a decision in the case.

NINTH CIRCUIT JUDGMENT October 23, 1996.
UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT
CAMILLE FJETLAND et al v. LONE STAR NW et al, Consolidated No's. 95-35435, 95-35790, 95-35913, 95-35975, 95-36127 and 95-36254

APPEAL FROM the United States District Court for the Western District of Washington (Seattle).

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the Western District of Washington (Seattle) and was duly submitted.

ON CONSIDERATION WHEREOF, It is now ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and hereby is AFFIRMED.
Filed and entered October 23, 1996.

CONSTITUTIONAL PROVISIONS, STATUTES, AND REGULATIONS

United States Constitution. Article I section 9(8):

No Title of Nobility shall be granted by the United States:...

United States Constitution. Article III section 1:

The judicial power of the United States, shall be vested in one Supreme Court, and in such inferior courts as the Congress may from time to time ordain and establish. The judges, both of the supreme and inferior courts, shall hold their offices during good behavior, and shall, at stated times, receive for their services, a compensation, which shall not be diminished during their continuance in office.

United States Constitution. Article III section 2:

The judicial power shall extend to all cases, in law and equity, arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority;--to all cases affecting ambassadors, other public ministers and consuls;--to all cases of admiralty and maritime jurisdiction;--to controversies to which the United States shall be a party;--to controversies between two or more states;--between a state and citizens of another state;--between citizens of different states;--between citizens of the same state claiming lands under grants of different states, and between a state, or the citizens thereof, and foreign states, citizens or subjects.

United States Constitution. 14th Amendment §1:

No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any state deprive any person of life, liberty or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

15 U.S.C. § 15 Suits by persons injured (Anti-Trust laws)

(a) Amount of recovery; prejudgment interest

Except as provided in subsection (b) of this section, any person who shall be injured in his business or property by reason of

anything forbidden in the antitrust laws may sue therefor in any district court of the United States in the district in which the defendant resides or is found or has an agent, without respect to the amount in controversy, and shall recover threefold the damages by him sustained, and the cost of suit, including a reasonable attorney's fee.

18 U.S.C. § 1964(c): (RICO)

Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the costs of the suit, including a reasonable attorney's fee.

42 U.S.C. § 1983: (Civil Rights)

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Americans With Disabilities Act, 42 U.S.C.A. §12101

Findings and purposes:

(a) Findings

The Congress finds that --

(1) some 43,000,000 Americans have one or more physical or mental disabilities, and this number is increasing as the population as a whole is growing older.

(2) historically, society has tended to isolate and segregate individuals with disabilities, and, despite some improvements, such forms of discrimination against individuals with disabilities continue to be a serious and pervasive social problem;

(3) discrimination against individuals with disabilities persists in such critical areas as employment, housing, public accommodation, education, transportation, communication,

recreation, institutionalization, health services, voting, and access to public services;

(4) unlike individuals who have experienced discrimination on the basis of race, color, sex, national origin, religion, or age, individuals who have experience discrimination on the basis of disability have often had no legal recourse to redress such discrimination;

(5) individuals with disabilities continually encounter various forms of discrimination, including outright intentional exclusion, the discriminatory effects of architecture, transportation, and communication barriers, overprotective rules and policies, failure to make modifications to existing facilities and practices, exclusionary qualification standards and criteria, segregation, relegation to lesser services, programs, activities, benefits, jobs, or other opportunities;

(6) census data, national polls, and other studies have documented that people with disabilities, as a group, occupy an inferior status in our society, and are severely disadvantaged socially, vocationally, economically, and educationally;

(7) individuals with disabilities are a discrete and insular minority who have been faced with restrictions and limitations, subjected to a history of purposeful unequal treatment and relegated to a position of political powerlessness in our society, based on characteristics that are beyond the control of such individuals and resulting from stereotypic assumptions not truly indicative of the individual ability of such individuals to participate in, and contribute to, society;

(8) the Nation's proper goals regarding individuals with disabilities are to assure equality or opportunity, full participation, independent living, and economic self sufficiency for such individuals; and

(9) the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous, and costs the United States billions of dollars in unnecessary expenses resulting from dependency and nonproductivity.

(b) Purpose

It is the purpose of this chapter---

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, enforceable standards addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal government plays a central role in enforcing the standards established in this chapter on behalf of individuals with disabilities; and

(4) to invoke the sweep of congressional authority, including the power to enforce the fourteenth amendment and to regulate commerce, in order to address the major areas of discrimination faced day-to-day by people with disabilities.

Fed. R. Civ. P. 11 Signing of Pleadings, Motions, and Other Papers; Representations to Court; Sanctions

(a) Signature. Every pleading, written motion and other paper shall be signed by at least one attorney of record in the attorney's individual name, or, if the party is not represented by an attorney, shall be signed by the party. Each paper shall state the signer's address and telephone number, if any. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(b) Representations to Court. By presenting to the court (whether by signing, filing, submitting, or later advocating) a pleading, written motion, or other paper, an attorney or unrepresented party is certifying that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances,

(1) it is not being presented for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation;

(2) the claims, defenses, and other legal contentions therein are warranted by existing law or by a nonfrivolous argument

for the extension, modification, or reversal of existing law or the establishment of new law;

(3) the allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on a lack of information or belief.

(c) **Sanctions**. If, after notice and a reasonable opportunity to respond, the court determines that subdivision (b) has been violated, the court may, subject to the conditions stated below, impose an appropriate sanction upon the attorneys, law firms, or parties that have violated subdivision (b) or are responsible for the violation.

(1) ***How Initiated***.

(A) ***By Motion***. A motion for sanctions under this rule shall be made separately from other motions or requests and shall describe the specific conduct alleged to violate subdivision (b). It shall be served as provided in Rule 5, but shall not be filed with or presented to the court unless, within 21 days after service of the motion (or such other period as the court may prescribe), the challenged paper, claim, defense, contention, allegation, or denial is not withdrawn or appropriately corrected. If warranted, the court may award to the party prevailing on the motion the reasonable expenses and attorney's fees incurred in presenting or opposing the motion. Absent exceptional circumstances, a law firm shall be held jointly responsible for violations committed by its partners, associates, and employees.

(B) ***On Court's Initiative***. On its own initiative, the court may enter an order describing the specific conduct that appears to violate subdivision (b) and directing an attorney, law firm, or party to show cause why it has not violated subdivision (b) with respect thereto.

(2) ***Nature of Sanction; Limitations.*** A sanction imposed for violation of this rule shall be limited to what is sufficient to deter repetition of such conduct or comparable conduct

by others similarly situated. Subject to the limitations in subparagraph (A) and (B), the sanction may consist of, or include, directives of a nonmonetary nature, an order to pay a penalty into court, or, if imposed on motion and warranted for effective deterrence, an order directing payment to the movant of some or all of the reasonable attorneys' fees and other expenses incurred as a direct result of the violation.

(A) Monetary sanctions may not be awarded against a represented party for a violation of subdivision (b)(2).

(B) Monetary sanctions may not be awarded on the court's initiative unless the court issues its order to show cause before a voluntary dismissal or settlement of the claims made by or against the party which is, or whose attorneys are, to be sanctioned.

(3) ***Order***. When imposing sanctions, the court shall describe the conduct determined to constitute a violation of this rule and explain the basis for the sanction imposed.

Fed. R. Civ. P. 17. Parties Plaintiff and Defendant; Capacity:

(a) Real party In Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in that person's own name without joining the party for whose benefit the action is brought; and when a statute of the United States so provides, an action for the use or benefit of another shall be brought in the name of the United States. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution or, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Capacity to Sue or be Sued. The capacity of an individual, other than one acting in a representative capacity, to sue or be sued shall be determined by the law of the individual's domicile. The capacity of a corporation to sue or be sued shall be

determined by the law under which it was organized. In all other cases capacity to sue or be sued shall be determined by the law of the state in which the district court is held, except (1) that a partnership or other unincorporated association, which has no such capacity by the law of such state, may sue or be sued in its common name for the purposes of enforcing for or against it a substantive right existing under the Constitution or laws of the United States, and (2) that the capacity of a receiver appointed by a court of the United States to sue or be sued in a court of the United States is governed by title 28, U.S.C., Section 754 and 959(a).

(c) Infants or Incompetent Persons. Whenever an infant or incompetent person has a representative, such as a general guardian, committee, conservator, or other like fiduciary, the representative may sue or defend on behalf of the infant or incompetent person. An infant or incompetent person who does not have a duly appointed representative may sue by a next friend or by a guardian ad litem. The court shall appoint a guardian ad litem for an infant or incompetent person not otherwise represented in an action or shall make such other order as it deems proper for the protection of the infant or incompetent person.

Washington State Constitution Article 4 Section 23:

There may be appointed in each county, by the judge of the superior court having jurisdiction therein, one or more court commissioners, not exceeding three in number, who shall have authority to preform like duties as a judge of the superior court at chambers, subject to revision by such judge, to take depositions and to perform such other business connected with the administration of justice as may be prescribed by law.

The Revised Code of Washington (RCW hereinafter):

RCW 2.32.050 states that it is the duty of the clerk:

(2) To record the proceedings of the court.

(3) To keep the records, files and other books and papers appertaining to the court.

(4) To file all papers delivered to him for that purpose in any

action or proceeding in the court as directed by court rule or statute.

RCW 11.88.005:

It is the intent of the legislature to protect the liberty and autonomy of all people of this state, and to enable them to exercise their rights under law to the maximum extent, consistent with the capacity of each person. The legislature recognizes that people with incapacities have unique abilities and needs, and that some people with incapacities cannot exercise their rights or provide for their basic needs without the help of a guardian. However, their liberty and autonomy should be restricted through the guardianship process only to the minimum extent necessary to adequately provide for their own health and safety, or to adequately manage their financial affairs.

RCW 11.88.010(1):

The superior court of each county shall have power to appoint guardians for the persons and/or estates of incapacitated persons, and guardians for the estates of nonresidents of the state who have property in the county needing care and attention.

RCW 11.88.010(a):

For the purpose of this chapter, a person may be deemed incapacitated as to person when the superior court determines that the individual has a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing, or physical safety.

RCW 11.88.010(b):

For the purposes of this chapter, a person is deemed incapacitated as to the person's estate when the superior court determines the individual is at significant risk of financial harm based upon a demonstrated inability to adequately manage property of financial affairs.

RCW 11.88.010(c):

A determination of incapacity is a legal not a medical question, based upon a demonstration of management insufficiencies over time in the area of person or estate. Age, eccentricity, poverty, or medical diagnosis alone shall not be sufficient to justify a finding of incapacity.

RCW 11.88.010(5):

All petitions filed under the provisions of this section shall be heard within sixty days unless an extension of time is requested by a party within such sixty day period and granted for good cause shown. It an extension is granted, the court shall set a new hearing date.

RCW 11.88.030(1)(I):

The nature and degree of the alleged incapacity and the specific areas of protection and assistance requested and the limitations of rights requested to be included in the court's order of appointment;...

RCW 11.88.030(4):

(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than five days alter the petition has been filed.

(b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

IMPORTANT NOTICE
PLEASE READ CAREFULLY

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE _____ COUNTY SUPERIOR COURT BY _____ IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

(1) TO MARRY OR DIVORCE;

(2) TO VOTE OR HOLD AN ELECTED OFFICE;

(3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;

(4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;

(5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;

(6) TO POSSESS A LICENSE TO DRIVE;

(7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;

(8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;

(9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;

(10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU. YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU. YOU HAVE THE EIGHT TO BE PRESENT IN COURT WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN.

RCW 11.88.030(5):

All petitions filed under the provisions of this section shall be heard within sixty days unless an extension of time is requested by a party within such sixty day period and granted for good cause shown. If an extension is granted, the court shall set a new hearing date.

RCW 11.88.040:

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given personally to the alleged incapacitated person, if over fourteen years of age, and served upon the guardian ad litem.

Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail requesting a return receipt signed by the addressee or an agent appointed by the addressee, or by personal service in the manner provided for services of summons, to the following:

(1) The alleged incapacitated person, or minor, if under fourteen years of age, and served upon the guardian ad litem;

(2) A parent if the alleged incapacitated person is a minor, all known children not residing with a notified person, and the spouse of the alleged incapacitated person if any;

(3) Any other person who has been appointed as guardian or limited guardian, or the person whith whom the alleged incapacitated person resides. No notices need be given to those persons named in subsection (2) and (3) of this section if they have signed the petition for the appointment of the guardian or limited guardian or have waived notice of the hearing.

(4) If the petition is by a parent asking for appointment as guardian or limited guardian of a minor child under the age of fourteen years, or if the petition is accompanied by the written consent of a minor of the age of fourteen years or upward, who consents to the appointment of the guardian or limited guardian asked for, or if the petition is by a nonresident guardian of any minor or incapacitated person, then the court may appoint the guardian without notice of thehearing. The court for good cause may reduce the number of days of notice, but in every case, at least three days notice shall be given.

The alleged incapacitated person shall be present in the court at the final hearing on the petition: *Provided,* That this requirement may be waived at the discretion of the court and for good cause other than mere inconvenience shown in the report to be provided by the guardiqn ad litem pursuant to RCW 11.88.090, as now or hereafter

amended, or if no guardian ad litem is required to be appointed pursuant to RCW 11.88.090, as now or hereinafter amended, at the discretion of the court for good cause shown by a party. Alternatively, the court may remove itself to the place of residence of the alleged incapacitated person and conduct the final hearing in the presence of the alleged incapacitated person. Final hearings on the petition may be held in closed court without admittance of any person other than those necessary to the action or proceeding.

If the presence of the alleged incapacitated person is waived and the court does not remove itself to the place of residence of such person, the guardian ad litem shall appear in person at the final hearing on the petition.

RCW 11.88.045(1)(a):

Alleged incapacitated individuals shall have the right to be represented by counsel at any stage in guardianship proceedings. The court shall provide counsel to represent any alleged incapacitated person at public expense when either: (I) The individual is unable to afford counsel, or (ii) the expense of counsel would result in substantial hardship to the individual, or (iii) the individual does not have practical access to funds with which to pay counsel. If the individual can afford counsel but lacks practical access to funds, the court shall provide counsel and may impose a reimbursement requirement as part of a final order. When, in the opinion of the court, the rights and interests of an alleged or adjudicated incapacitated person cannot otherwise be adequately protected and represented, the court on its own motion shall appoint an attorney at any time to represent such person. Counsel shall be provided as soon as practicable after a petition is filed and long enough before any final hearing to allow adequate time for consultation and preparation. Absent a convincing showing in the record to the contrary, a period of less than three weeks shall be presumed by the reviewing court to be inadequate time for consultation and preparation.

RCW 11.88.045(1)(b):

Counsel for an alleged incapacitated individual shall act as

an advocate for the client and shall not substitute counsels own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences.

RCW 11.88.045(3):

The alleged incapacitated person is further entitled upon request to a jury trial on the issues of his or her alleged incapacity. The standard of proof to be applied in a contested case, whether before a jury or the court, shall be that of clear, cogent, and convincing evidence."

RCW 11.88.045(4):

In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a written report of a physician licensed to practice under chapter 18.71 or 18.57 RCW or licensed or certified psychologist selected by the guardian ad litem. The physician or psychologist shall have personally examined and interviewed the alleged incapacitated person within thirty days of the report to the court and shall have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have. The report shall contain the following information and shall be set forth in substantially the following format:

(a) The name and address of the examining physician or psychologist;

(b) The education and experience of the physician or psychologist pertinent to the case;

(c) The dates of examinations of the alleged incapacitated person;

(d) A summary of the relevant medical, functional, neurological, psychological, or psychiatric history of the alleged incapacitated person known to the examining physician or psychologist;

(e) The findings of the examining physician or psychologist as to the condition of the alleged
incapacitated person;

(f) Current medications;

(g) The effect of current medications on the alleged incapacitated person's ability to understand or
participate in the guardianship;

(h) Opinions on the specific assistance the alleged incapacitated person needs;

(i) Identification of persons with whom the physician or psychologist has met or spoken regarding the alleged incapacitated person.

The court shall not enter an order appointing a guardian or limited guardian until a medical or psychological report meeting the above requirements is filed.

RCW 11.88.090(5): The guardian ad litem appointed pursuant to this section shall have the following duties:

(a) To meet and consult with the alleged incapacitated person as soon as practicable following appointment and explain, in language which such person can reasonably be expected to understand, the substance of the petition, the nature of the resultant proceedings, the person's right to contest the petition, the identification of the proposed guardian or limited guardian, the right to a jury trial on the issue of his or her incapacity, the right to independent legal counsel as provided by RCW 11.88.045, and the right to be present in court at the hearing on the petition;

(b) To obtain a written report according to RCW 11.88.045; and such other written or oral reports from other qualified professionals as are necessary to permit the guardian ad litem to complete the report required by this section;

(c) To meet with the person whose appointment is sought as guardian or limited guardian and ascertain:

(i) The proposed guardian's knowledge of the duties, requirements, and limitations of a guardian; and

(ii) The steps the proposed guardian intends to take or has taken to identify and meet the needs of the alleged incapacitated person;

(d) To consult as necessary to complete the investigation and report required by this section with those known relatives, friends, or other persons the guardian ad litem determines have had a

significant, continuing interest in the welfare of the alleged incapacitated person;

(e) to provide the court with a written report which shall include the following:

(i) A description of the nature, cause, and degree of incapacity, and the basis upon which this judgment was made;

(ii) A description of the needs of the incapacitated person for care and treatment, the probable residential requirements of the alleged incapacitated person and the basis upon which these finding were made;

(iii) An evaluation of the appropriateness of the guardian or limited guardian whose appointment is sought and a description of the steps the proposed guardian has taken or intends to take to identify and meet current and emerging needs of the incapacitated person;

(iv) A description of the abilities of the alleged incapacitated person and a recommendation as to whether a guardian or limited guardian should be appointed. If appointment of a limited guardian is recommended, the guardian as litem shall recommend the specific areas of authority the limited guardian should have and the limitations and disabilities to be placed on the incapacitated person;

(v) An evaluation of the person's mental ability to rationally exercise the right to vote and the basis upon which this evaluation is made;

(vi) any expression of approval or disapproval made by the alleged incapacitated person concerning the proposed guardian or limited guardian or guardianship or limited guardianship;

(vii) Identification of persons with significant interest in the welfare of the alleged incapacitated person who should be advised of their right to request special notice of proceedings pursuant to RCW 11.92.150; and

(viii) Unless independent counsel has appeared for the alleged incapacitated person, an explanation of how the alleged incapacitated person responded to the advice of the right to jury trial, to independent counsel and to be present at the hearing on the petition.

Within forty-five days after notice of commencement of the

guardianship proceeding has been served upon the guardian ad litem, and at least ten days before the hearing on the petition, unless an extension or reduction of time has been granted by the court for good cause, the guardian ad litem shall file its report and send a copy to the alleged incapacitated person and his or her spouse, all children not residing with a notified person, those persons described in (d) of this subsection, and persons who have filed a request for special notice pursuant to RCW 11.92.150;

(f) To advise the court of the need for appointment of counsel for the alleged incapacitated person within five days after the meeting described in (a) of this subsection unless (i) counsel has appeared, (ii) the alleged incapacitated person affirmatively communicated a wish not to be represented by counsel after being advised of the right to representation and the conditions under which court-provided counsel may be available, or (iii) the alleged incapacitated person was unable to communicate at all on the subject, and the guardian ad litem is satisfied that the alleged incapacitated person does not affirmatively desire to be represented by counsel.

RCW 11.88.090(7): The court appointed guardian ad litem shall have the authority, in the event that the alleged incapacitated person is in need of emergency life-saving medical services, and is unable to consent to such medical services due to incapacity pending the hearing on the petition to give consent for such emergency life-saving medical service on behalf of the alleged incapacitated person.

RCW 11.88.090(9): Upon the presentation of the guardian ad litem report and the entry of an order either dismissing the petition for appointment of a guardian or limited guardian or appointing a guardian or limited guardian, the guardian ad litem shall be dismissed and shall have no further duties or obligations unless otherwise ordered by the court. If the court orders the guardian ad litem to perform further duties or obligations, they shall not be performed at county expense.

RCW 11.88.095(1):

In determining the disposition of a petition for guardianship, the court's order shall be based upon findings as to the capacities, condition, and needs of the alleged incapacitated person, and shall not be based solely upon agreements made by the parties."

RCW 11.92.060(5) Limited guardian:

Limited guardians may serve and be served with process or actions on behalf of the incapacitated person, but only to the extent provided for in the court order appointing a limited guardian."

RCW 23B.03.020(2)(a):

(2) Unless its articles of incorporation provide otherwise, every corporation has the same powers as an individual to do all things necessary and convenient to carry out its business and affairs, including without limitation, power:

(a) To sue and be sued, and defend in its corporate name;...."

Washington Superior Court Civil Rule 80(b)

:

(I)n any civil or criminal proceedings, electronic or mechanical recording devices approved by the Administrator for the Courts may be used to record oral testimony and other oral proceedings in lieu of or supplementary to causing shorthand notes thereof to be taken.

Arizona Statutes

Ariz. Rev. Stat §14-5304 Findings; order of appointment; limitations; filing

A. The court may appoint a guardian as requested if it is satisfied by clear and convincing evidence that the person for whom a guardian is sought is incapacitated and that the appointment is necessary to provide for the demonstrated needs of the incapacitated person.

B. In conformity with the evidence regarding the extent of the ward's incapacity, the court may specify time limits on the guardianship and limitations on the guardian's powers.

C. The guardian shall file an acceptance of appointment with the

appointing co

Ariz. Rev. Stat §14-5101 Definitions
In this title, unless the context otherwise requires:
1. "Incapacitated person" means any person who is impaired by reason of mental illness, mental deficiency, mental disorder, physical illness or disability, chronic use of drugs, chronic intoxication or other cause, except minority, to the extent that he lacks sufficient understanding or capacity to make or communicate responsible decisions concerning his person.

CALIFORNIA PROBATE CODE

Cal. Prob. Code § 810. The Legislature finds and declares the following:

(a) A person who has a mental or physical disorder may still be capable of contracting, conveying, marrying, making medical decisions, executing wills or trusts, and performing other actions.

(b) A judicial determination that a person is totally without understanding, or is of unsound mind, or suffers from one or more mental deficits so substantial that, under the circumstances, the person should be deemed to lack the legal capacity to perform a specific act, should be based on evidence of a deficit in one or more of the person's mental functions rather than on a diagnosis of a person's mental or physical disorder.

Cal. Prob. Code § 811. (a) A determination that a person is of unsound mind or lacks the capacity to make a decision or do a certain act, including, but not limited to, the incapacity to contract, to make a conveyance, to marry, to make medical decisions, to vote, or to execute wills or trusts, shall be supported by evidence of a deficit in at least one of the following mental functions, subject to subdivision (b): (1) Alertness and attention, including, but not limited to, the
following:

(A) Level of arousal or consciousness.

(B) Orientation to time, place, person, and situation.

(C) Ability to attend and concentrate.

(2) Information processing, including, but not limited to, the following:

(A) Short- and long-term memory, including immediate recall.

(B) Ability to understand or communicate with others, either verbally or otherwise.

(C) Recognition of familiar objects and familiar persons.

(D) Ability to understand and appreciate quantities.

(E) Ability to reason using abstract concepts.

(F) Ability to plan, organize, and carry out actions in one's own

(G) Ability to reason logically.

(3) Thought processes. Deficits in these functions may be demonstrated by the presence of the following:

(A) Severely disorganized thinking.

(B) Hallucinations.

(C) Delusions.

(D) Uncontrollable, repetitive, or intrusive thoughts.

(4) Ability to modulate mood and affect. Deficits in this ability may be demonstrated by the presence of a pervasive and persistent or recurrent state of euphoria, anger, anxiety, fear, panic, depression, hopelessness or despair, helplessness, apathy or indifference, which is inappropriate in degree to the individual's circumstances.

(b) A deficit in the mental functions listed above may be considered only if the deficit, by itself or in combination with one or more other mental function deficits, significantly impairs the person's ability to understand and appreciate the consequences of his or her actions with regard to the type of act or decision in question.

(c) In determining whether a person suffers from a deficit in mental function so substantial that the person lacks the capacity to do a certain act, the court may take into consideration the frequency, severity, and duration of periods of impairment.

(d) The mere diagnosis of a mental or physical disorder shall not be sufficient in and of itself to support a determination that a

person is of unsound mind or lacks the capacity to do a certain act.

(e) This part applies only to the evidence that is presented to, and the findings that are made by, a court determining the capacity of a person to do a certain act or make a decision, including, but not limited to, making medical decisions. Nothing in this part shall affect the decision making process set forth in Section 1418.8 of the Health and Safety Code, nor increase or decrease the burdens of documentation on, or potential liability of, physicians and surgeons who, outside the judicial context, determine the capacity of patients to make a medical decision.

Cal. Prob. Code § 812. Except where otherwise provided by law, including, but not limited to, Section 813 and the statutory and decisional law of testamentary capacity, a person lacks the capacity to make a decision unless the person has the ability to communicate verbally, or by any other means, the decision, and to understand and appreciate, to the extent relevant, all of the following:

(a) The rights, duties, and responsibilities created by, or affected by the decision.

(b) The probable consequences for the decision maker and, where appropriate, the persons affected by the decision.

(c) The significant risks, benefits, and reasonable alternatives involved in the decision.

Cal. Prob. Code § 813. (a) For purposes of a judicial determination, a person has the capacity to give informed consent to a proposed medical treatment if the person is able to do all of the following:

(1) Respond knowingly and intelligently to queries about that medical treatment.

(2) Participate in that treatment decision by means of a rational thought process.

(3) Understand all of the following items of minimum basic medical treatment information with respect to that treatment:

(A) The nature and seriousness of the illness, disorder, or defect that the person has.

(B) The nature of the medical treatment that is being recommended by the person's health care providers.

(C) The probable degree and duration of any benefits and risks of any medical intervention that is being recommended by the person's health care providers, and the consequences of lack of treatment.

(D) The nature, risks, and benefits of any reasonable alternatives.

(b) A person who has the capacity to give informed consent to a proposed medical treatment also has the capacity to refuse consent to that treatment.

Cal. Prob. Code § 1820. (a) A petition for the appointment of a conservator may be filed by any of the following:

(1) The proposed conservatee.

(2) The spouse of the proposed conservatee.

(3) A relative of the proposed conservatee.

(4) Any interested state or local entity or agency of this state or any interested public officer or employee of this state or of a local public entity of this state.

(5) Any other interested person or friend of the proposed conservatee.

(b) If the proposed conservatee is a minor, the petition may be filed during his or her minority so that the appointment of a conservator may be made effective immediately upon the minor's attaining the age of majority. An existing guardian of the minor may be appointed as conservator under this part upon the minor's attaining the age of majority, whether or not the guardian's accounts have been settled.

(c) A creditor of the proposed conservatee may not file a petition for appointment of a conservator unless the creditor is a person described in paragraph (2), (3), or (4) of subdivision (a).

Cal. Prob. Code § 1821. (a) The petition shall request that a conservator be appointed for the person or estate, or both, shall specify the name, address, and telephone number of the proposed conservator and the name, address, and telephone number of the proposed conservatee, and state the reasons why a conservatorship is necessary. Unless the petitioner is a bank or other entity

authorized to conduct the business of a trust company, the petitioner shall also file supplemental information as to why the appointment of a conservator is required. The supplemental information to be submitted shall include a brief statement of facts addressed to each of the following categories:

(1) The inability of the proposed conservatee to properly provide for his or her needs for physical health, food, clothing, and shelter.

(2) The location of the proposed conservatee's residence and the ability of the proposed conservatee to live in the residence while under conservatorship.

(3) Alternatives to conservatorship considered by the petitioner and reasons why those alternatives are not available.

(4) Health or social services provided to the proposed conservatee during the year preceding the filing of the petition, when the petitioner has information as to those services.

(5) The inability of the proposed conservatee to substantially manage his or her own financial resources, or to resist fraud or undue influence.

The facts required to address the categories set forth in paragraphs (1) to (5), inclusive, shall be set forth by the petitioner when he or she has knowledge of the facts or by the declarations or affidavits of other persons having knowledge of those facts.

Where any of the categories set forth in paragraphs (1) to (5), inclusive, are not applicable to the proposed conservatorship, the petitioner shall so indicate and state on the supplemental information form the reasons therefor.

The Judicial Council shall develop a supplemental information form for the information required pursuant to paragraphs (1) to (5), inclusive, after consultation with individuals or organizations approved by the Judicial Council, who represent public conservators, court investigators, the State Bar, specialists with experience in performing assessments and coordinating community-based services, and legal services for the elderly and disabled.

The supplemental information form shall be separate and distinct from the form for the petition. The supplemental information shall

be confidential and shall be made available only to parties, persons given notice of the petition who have requested this supplemental information or who have appeared in the proceedings, their attorneys,
and the court. The court shall have discretion at any other time to release the supplemental information to other persons if it would serve the interests of the conservatee. The county clerk shall make provision for limiting disclosure of the supplemental information exclusively to persons entitled thereto under this section.

(b) The petition shall set forth, so far as they are known to the petitioner, the names and addresses of the spouse and of the relatives of the proposed conservatee within the second degree. If no spouse of the proposed conservatee, or relatives of the proposed conservatee within the second degree are known to the petitioner, the petition shall set forth, so far as they are known to the
petitioner, the names and addresses of the following persons who, for the purposes of Section 1822, shall all be deemed to be relatives:

(1) A spouse of a predeceased parent of a proposed conservatee.

(2) The children of a predeceased spouse of a proposed conservatee.

(3) The siblings of the proposed conservatee's parents, if any, but if none, then the natural and adoptive children of the proposed conservatee's parents' siblings.

(4) The natural and adoptive children of the proposed conservatee' s siblings.

(c) If the petition is filed by a person other than the proposed conservatee, the petition shall state whether or not the petitioner is a creditor or debtor, or the agent of a creditor or debtor, of the proposed conservatee.

(d) If the proposed conservatee is a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental
Services and that fact is known to the petitioner, the petition shall state that fact and name the institution.

(e) The petition shall state, so far as is known to the
petitioner, whether or not the proposed conservatee is receiving or

is entitled to receive benefits from the Veterans Administration and the estimated amount of the monthly benefit payable by the Veterans Administration for the proposed conservatee.

(f) The petition may include an application for any order or orders authorized under this division, including, but not limited to, orders under Chapter 4 (commencing with Section 1870).

(g) The petition may include a further statement that the proposed conservatee is not willing to attend the hearing on the petition, does not wish to contest he establishment of the conservatorship, and does not object to the proposed conservator or prefer that another person act as conservator.

(h) In the case of an allegedly developmentally disabled adult the petition shall set forth the following:

(1) The nature and degree of the alleged disability, the specific duties and powers requested by or for the limited conservator, and the limitations of civil and legal rights requested to be included in the court's order of appointment.

(2) Whether or not the proposed limited conservatee is or is alleged to be developmentally disabled.

Reports submitted pursuant to Section 416.8 of the Health and Safety Code meet the requirements of this section, and conservatorships filed pursuant to Article 7.5 (commencing with Section 416) of Part 1 of Division 1 of the Health and Safety Code are exempt from providing the supplemental information required by this section, so long as the guidelines adopted by the State Department of Developmental Services for regional centers require the same information which is required pursuant to this section.

Indiana Code

Ind. Code 29-3-1-§ 7.5. "Incapacitated person" means an individual who:

(1) cannot be located upon reasonable inquiry;

(2) is unable:

(A) to manage in whole or in part the individual's property;

(B) to provide self-care; or

(C) both;

because of insanity, mental illness, mental deficiency, physical illness, infirmity, habitual drunkenness, excessive use of drugs, incarceration, confinement, detention, duress, fraud, undue influence of others on the individual, or other incapacity; or
(3) has a developmental disability (as defined in IC 12-7-2-61).

Ind. Code 29-3-5-§ 1

Sec. 1. (a) Any person may file a petition for the appointment of a person to serve as guardian for an incapacitated person or minor under this chapter or to have a protective order issued under IC 29-3-4. The petition must state the following:
(1) The name, age, residence, and post office address of the alleged incapacitated person or minor for whom the guardian is sought to be appointed.
(2) The nature of the incapacity.
(3) The approximate value and description of the property of the incapacitated person or minor, including any compensation, pension, insurance, or allowance to which the incapacitated person or minor may be entitled.
(4) If a limited guardianship is sought, the particular limitations requested.
(5) Whether a guardian has been appointed or is acting for the incapacitated person or minor in any state.
(6) The residence and post office address of the proposed guardian and the proposed guardian's relationship to the alleged incapacitated person.
(7) The names and addresses, as far as known or as can reasonably be ascertained, of the persons most closely related by blood or marriage to the person for whom the guardian is sought to be appointed.
(8) The name and address of the person or institution having the care and custody of the person for whom the guardian is sought to be appointed.
(9) The names and addresses of any other incapacitated persons or minors for whom the proposed guardian is acting if the proposed guardian is an individual.

(10) The reasons the appointment of a guardian is sought and the interest of the petitioner in the appointment.
(11) The name and business address of the attorney who is to represent the guardian.
(b) Notice of a petition under this section for the appointment of a guardian and the hearing on the petition shall be given under IC 29-3-6.
(c) After the filing of a petition, the court shall set a date for hearing on the issues raised by the petition. Unless an alleged incapacitated person is already represented by counsel, the court may appoint an attorney to represent the incapacitated person.
(d) A person alleged to be an incapacitated person must be present at the hearing on the issues raised by the petition and any response to the petition unless the court determines by evidence that:
(1) it is impossible or impractical for the alleged incapacitated person to be present due to the alleged incapacitated person's disappearance, absence from the state, or similar circumstance;
(2) it is not in the alleged incapacitated person's best interest to be present because of a threat to the health or safety of the alleged incapacitated person as determined by the court;
(3) the incapacitated person has knowingly and voluntarily consented to the appointment of a guardian or the issuance of a protective order and at the time of such consent the incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from knowingly and voluntarily consenting; or
(4) the incapacitated person has knowingly and voluntarily waived notice of the hearing and at the time of such waiver the incapacitated person was not incapacitated as a result of a mental condition that would prevent that person from making a knowing and voluntary waiver of notice.
(e) A person alleged to be an incapacitated person may present evidence
and cross-examine witnesses at the hearing. The issues raised by the petition and any response to the petition shall be determined by a jury if a jury is requested no later than seventy-two (72) hours prior to the original date and time set for the hearing on the petition.

However, in no event may a request for a jury trial be made after thirty (30) days have passed following the service of notice of a petition.

(f) Any person may apply for permission to participate in the proceeding, and the court may grant the request with or without hearing upon determining that the best interest of the alleged incapacitated person or minor will be served by permitting the applicant's participation. The court may attach appropriate conditions to the permission to participate.

Missouri Revised Statutes
Chapter 475 Probate Code--Guardianship

Mo. Rev. Stat. § 475.030 Letters of guardianship and conservatorship issued, when.

1. Letters of guardianship of the person may be granted for any person adjudged incapacitated. Letters of conservatorship of the estate may be granted for any person adjudged to be disabled.

Mo. Rev. Stat. § 475.010 Definitions.
When used in this chapter, unless otherwise apparent from the context, the following terms mean:
(9) "Incapacitated person", one who is unable by reason of any physical or mental condition to receive and evaluate information or to communicate decisions to such an extent that he lacks capacity to meet essential requirements for food, clothing, shelter, safety or other care such that serious physical injury, illness, or disease is likely to occur. The term "incapacitated person" as used in this chapter includes the term "partially incapacitated person" unless otherwise specified or apparent from the context;

THE COMPLAINT THAT STARTED THIS MATTER: FIRST AMENDED COMPLAINT FOR DAMAGES FOR ANTI-TRUST, CIVIL RIGHTS, RICO FEDERAL VIOLATIONS AND PENDENTE ACTIONS

Come now the Plaintiffs and for causes of action against the

defendants allege:

I PARTIES

1. CAMILLE FJETLAND is the thirty four year old widow of William Fjetland to whom she was married from July 2, 1989 till his death on June 8, 1991. She owns 95% of the stock ownership of Earth Enterprises, Inc., dba Portside Recycling, a Washington corporation, hereinafter referred to as Portside, and 85% of the stock ownership in B & L Trucking & Construction, Inc., a Washington corporation, hereinafter referred to as B & L. She has two children, a high school education and an honorable discharge from the United States Air Force. She resides in Tacoma, Washington. She is the president of Portside and but for the actions of some of the defendants herein, she would be the president of B & L.

2. PORTSIDE: Earth Enterprises, Inc. dba Portside Recycling, is a Washington corporation founded in about 1990 that was administratively dissolved on April 25, 1994, through the deliberate actions and/or omissions of Geoffrey Cross and Bobby Delavergne, but which was reinstated by Camille Fjetland on December 1, 1994. Portside has a long term lease to property owned by B & L and formerly owned by William Fjetland which property is now owned by Camille Fjetland. Said lease dates from October 25, 1990 and is recorded under Pierce County records file number 9204210680. The leased land covers a considerable acreage of commercially used land in the Tacoma tide flats area principally used as the office of B & L as well as Portside and also used for surface mining of fill and gravel, for recycling of construction wastes, and as a parking and storage yard for construction equipment and construction materials. Portside qualifies as a woman's minority supplier of construction materials in the State of Washington. Portside had the mining permit for the surface mining on the above described land until the same was either canceled or transferred to Bobby Delavergne to his own company, Marine Vies Recycling, Inc. It had been operating the surface mining, sales and recycling operations on the properties until Bobby Delavergne transferred those operations to his own company, Marine View Recycling, Inc.. Its offices are in Tacoma, Washington. Portside also used under

lease the trucks that were personally owned by Camille Fjetland.

3. **MARINE VIEW RECYCLING, INC.,** (hereinafter referred to as Marine View) is a Washington Corporation formed by Bobby Delavergne in 1993 and incorporated in the State of Washington on June 15, 1993 by Bobby Delavergne and Michael Stansbury, a current employee of Marine View. Although Plaintiff Camille Fjetland has some paper interest in that company, she has no voice in the company and the majority of the stock is held and owned by Bobby Delavergne. Marine View is a defendant in the anti trust action and in related state pendente actions.

4. **LONE STAR NORTHWEST** (hereinafter referred to as Lone Star) is a corporation believed to principally be foreign owned. It offices are in Seattle, King County, Washington. It is one of the largest suppliers of concrete and aggregate on the west coast extending from Washington into Oregon. Until November 15, 1993 Bobby Delavergne was an employee of Lone Star. It competes directly with Portside in the furnishing of fill and gravel. It has a joint venture or partnership with Tucci & Sons, Inc. for operations at its Tacoma Tide Flats plant that now overlap onto the property leased to Portside and owned by Camille Fjetland and B & L. Lone Star is a defendant in the anti trust action and in related.

5. **TUCCI & SONS, INC.,** (hereinafter referred to as Tucci) is a Washington Corporation, in the business of road building and as a common carrier. It would have been in some competition with B & L and would have used fill and gravel materials from Portside, Marine View, or Lone Star and recycling facilities of either Portside or Marine View in its operations. It has the joint venture with Lone Star that involves the operation and use of a multi million dollar asphalt burner plant at Lone Star's Tacoma tide flat's plant site and also involves the purchase of some minimum amount of materials from Lone Star. Tucci & Sons, Inc. is a defendant in an anti-trust action.

6. **BOBBY J. DELAVERGNE**, whose name will appear from time to time in these proceedings as Robert Delavergne or DeLaVergne or Bobby DeLaVergne, controls and owns the majority of the shares in Marine View. He also controls the business property of Camille Fjetland under a collusive conspiratorial guardianship

arrangement with Geoffrey Cross, G. Perrin Walker and James M. Marshall, and perhaps others whose names are not currently known. However, he abandoned any control over the property and rights of Portside when he allowed it to be administratively dissolved. His powers as a guardian have been suspended. He is married to Jane Doe Delavergne and all acts alleged done by him herein were done on behalf of himself and his marital community. Delavergne is a defendant in both the anti trust and civil rights actions and in pendente actions. He has been employed in the construction industry since 1974 and worked for Lone Star from 1988 through at least November 15, 1993, and was superintendent of Lone Star's Redi Mix operations in Pierce County and had overseen projects for Lone Star in the financial range of $500,000 to five million dollars.

7. **GEOFFREY CROSS** (hereinafter referred to as Cross) is a Washington State attorney with Washington State Bar Association number 3089. He is married to Jane Doe Cross and all acts done by Geoffrey Cross as alleged herein were done on his behalf and on that of his marital community. At one time or another, often at the same time and in overlapping and conflicting situations, Cross represented Camille Fjetland, Joe Esson, Bobby Delavergne, Marine View Recycling, B & L and Portside. Cross is a defendant in anti-trust and civil rights violations and in related pendente actions.

8. **G. PERRIN WALKER** is a member of the Washington State Bar Association and his bar number is 4013. All acts alleged done on behalf of G. Perrin Walker were done on his own behalf and on behalf of his marital community with Jane Doe Walker. G. Perrin Walker is a defendant in both the anti trust and the civil rights actions and possibly in related pendente actions. He represented one Karen M. Jones, sister of William Fjetland, deceased. Karen M. Jones is believe to have been an unwitting participant in the anti trust and civil rights conspiracies.

9. **JAMES M. MARSHALL**, hereinafter referred to as Marshall of Commissioner Marshal, is an appointed court commissioner with the Superior Court of Pierce County and all acts done herein by Marshall were done on behalf of himself and his marital community. Marshall is a defendant in the civil rights cases.

II JURISDICTION

10. 15 U.S.C.A. §15 grants exclusive subject matter jurisdiction to the United States district Court for private actions under 15 U.S.C.A. §1.

11. Subject matter jurisdiction is in the United States District Court over actions under 42 U.S.C.A. §§1983 and 1985. Claims are also asserted under 18 U.S.C. §1962 where the district court has concurrent jurisdiction.

12. The amounts in controversy exceed $50,000.00.

13. The District court has pendente jurisdiction over the facts of this case to address any state claims because the case arises under the Constitution, and laws of the United States and the relation between the federal claims and the state claims permits the conclusion that these are related and in fact one case under the facts so presented.

III VENUE

14. Venue is set in the Western district of Washington because all parties reside therein or have offices therein and it is further set in Seattle because the defendant, Lone Star has its principal office in Seattle.

IV GENERAL FACTUAL ALLEGATIONS

15. Road building around the United States provides one of one of the major avenues of interstate and foreign commerce and is vital to the interstate and foreign commerce of the United States. It is a recipient of major Congressional investment of funds. For many years three arms or principal feeders of this vast interstate and foreign network have been planned in and near the Tacoma tide flats, SR 509, connecting to Interstate 5, the Cascade Corridor and the East West highway projects that require road building and road improvement. These arteries also support the traffic to and from and expansion of the Port of Tacoma, a salt water port on Puget Sound carrying interstate and foreign commerce of the United States.

16. Road building and road improvement require the use of gravel, fill, construction materials and often recycling the debris of construction demolition so that the new can replace and improve the old. Portside had been in those businesses since its inception and was operating. Portside has logically concluded that it would bid upon and win supply the contracts for its products and services in the Tacoma tide flats area and receive at least $5.00 a yard for its fill

and gravel material as that material brings as much as $7.00 a yard in the Tacoma tide flats area. Portside had about four and a half million yards of that material and it could be produced for about $.50 a yard. Portside would have also owed a royalty under its lease for the material to B & L and to Camille Fjetland of 5% of the net income generated by the sale of any gravel removed from the property. There appears to have been at least twenty million dollars worth of profit from fill material available to Portside to be used upon the road projects described in or near the Tacoma Tide Flats area, interconnecting an alternate route with Interstate 5 in South King County, and an interconnection with the Port of Tacoma from an interchange in South King County and other work affecting interstate commerce and Portside had the only material satisfactory to the quality required immediately adjacent to the projects and indeed, also had a further competitive advantage in that it was a qualified minority supplier recognized by the State of Washington. Portside was assured of selling all of its material for use on the these road projects, and still being left with the recycling business, which would have been ongoing and very valuable industrial land in the Tacoma Tide Flats area doing business with firms in King and Pierce Counties. This was well know to the plaintiffs and probably most of the defendants years before the present actions complained of took place. Portside had refused to sell most of its product at cheap prices and had chosen to keep its most of its product off the market just so it could cash in on these projects.

17. Lone Star could have either been a competitor to Portside in the aforesaid road projects or used Portside's material for its own finished concrete and aggregate products and had used and could have continued to use Portside for disposal of its concrete waste and as a recycling facility.

18. The asphalt burner partnership or joint venture between Tucci and Lone Star has resulted in the displacement of the parking space for Lone Star's large fleet of concrete trucks. Portside was negotiating with Lone Star, through Bobby Delavergne, to rent or lease space to Lone Star for parking its fleet of trucks, washing out their waste residue, and using it making ecology blocks to get rid of it and also to act as a consignee of Lone Stars's aggregate, all at

considerable savings to Lone Star and at considerable profit to Portside with a minimal imposition on the overall properties of Portside and owned by Camille Fjetland. The exact amount of savings and losses will have to be calculated over a fifteen year period after an examination of the long term contract with Tucci and Lone Star and other materials in the exclusive possession of Lone Star and Tucci and perhaps Bobby Delavergne or his company, Marine View.

19. William Fjetland was seriously ill with cancer the last two years of his life. He became the mentor for Camille Fjetland in the businesses, teaching her about the construction and trucking business and letting her run the businesses. He helped her set up Portside with the understanding that it would be a completely separate minority qualified company that would run the mining and recycling businesses on the property under a long term lease that the two of them agreed upon. Camille Fjetland at the time was president of both B & L Trucking and of Portside and William Fjetland was vice president of B & L. B & L kept the trucking business as it had a very broad Washington State Utilities and Transportation Common Carriers permit of considerable value. Camille Fjetland went through IRS audits, learned the importance of keeping good and separate books and did so both as required by the IRS and as required to qualify and maintain the qualification of Portside as a woman's minority business.

20. Towards the end of his life, William Fjetland was curiously singled out of the numerous truckers who moved and disposed of material for Asarco to be the target of regulatory investigation on the movement and storage of that material and especially to property (hereinafter referred to as the Super Fund site) of one of his other companies, Executive Bark, Inc., (hereinafter referred to as Executive or Executive Bark). The Executive Bark site was especially attractive to defense lawyers as there were insurance policies that have paid out tens of thousands of dollars and more in defense legal fees with regard to Super Fund environmental allegations and actions. Cross has benefitted from this. Apparently it was one of the few sites to provide such a lucrative defense cost fund. In any event, that and very obstinate action of the City of

Tacoma involved the Fjetlands and their companies in protracted litigation, and that protracted litigation seems to go on and on while resolution of their own rights seemed to continue in limbo.

21. Mining and recycling of construction debris and materials had been going on the site of the B & L Portside property since the 1960's under mining permits from the Department of Natural Resources and under a use permit issued by Pierce County. The City of Tacoma knew this when it proposed to annex the property and at that time it appeared clear that the property would be taken into the city and these uses "grandfathered". Curiously enough after William Fjetland fell ill and, especially after he died, the City of Tacoma renigged and tried to outlaw these operations, and especially the recycling business just as it was becoming very profitable. It continues to drag its feet on appropriate zoning for these operations as this complaint is dictated. In the mean time Tucci and Lone Star got ready approval for the installation of their new asphalt burner plant and Marine View has been able to work out with the City of Tacoma some right to use the property of B & L and possible Camille Fjetland as a recycling plant. Cross was one of the attorneys in these actions.

22. On December 1, 1991, Portside and David Neubauer d/b/a Construction Management, Inc., (hereinafter identified as Neubauer) entered into an agreement to share part of the Portside leasehold premises for the purposes of constructing, operating and managing a recycling system to process construction and demolition wood waste, i.e. pallets, demolition wood and other wood odds and ends. They agreed to share the net proceeds of this operation equally. Portside was to furnish, and did furnish, no less than two acres of its land for the operation together with stockpiling land. The agreement was for an indefinite duration to be terminated only upon 180 days of written notice or at any other time by agreement of the parties.

23. Neubauer and Portside disputed the amounts of money each was to receive from the operation and an action for receivership of the operation was initiated by Neubauer on September 30, 1992 (Pierce County Superior Court cause No. 92-2-09598-5). Neubauer was represented by G. Perrin Walker. Neubauer accused Fjetland of misdirecting funds and Fjetland believed at the time that Neubauer

had diverted sums of near or over $100,000 to his own personal account rather than running them through the joint venture. Portside was represented by Cross in this action. As a result of this action and a stipulated order of Cross and Walker a receiver was appointed to handle all of the financial operations of the joint venture and the parties were ordered to refrain from transferring, hypothecating, or disposing of any assets or property of the joint venture except as directed by the court.

24. In the first quarter of 1993, Neubauer began to move the operations of recycling off the premises and was apparently beginning to set up a competing recycling business. This apparently became Recovery 1, a business that was servicing wood recycling accounts with such firms as Wm. Dickson Co, in Tacoma, Eugene Particle Board, an operating unit of the Portland, Eugene Oregon operations of Willamette Industries, Inc., and Boise Cascade by February, 1994. Neubauer never gave the 180 day notice of the termination of the agreement with Portside. However, that termination was effectively condoned by the agreed order terminating the receivership and discharging the receiver on July 6, 1993 after Delavergne had taken over B & L and had become Mrs. Fjetland's guardian and had locked the receiver out of the office of Portside. As late as January 10, 1995, Recovery 1 still had possession of at least one or more of the trucks of Portside and Camille Fjetland, including a 1981 Peterbuilt with license number N394033 and vehicle serial or ID number 1XP9D29X7BP139445. It had been using these trucks in its business, such as for frequent trips to and from 313 F. Street in Tacoma, where apparently Marine Industries Northwest needed to send materials to be recycled. It is believed that Ames Construction has furnished the property and is the major financier of Recovery 1.

25. Camille Fjetland, in grief from the loss of her husband and beset by the environmental and zoning problems, found she was also facing employee dishonesty at a time she also believe that Neubauer had wrongfully taken around $100,000 from the joint venture. Neubauer appears to have inappropriately removed money from the partnership threatening the financial stability of the Portside and the joint venture. Neubauer appears to have been a friend of Delavergne

and apparently still does business with him under Marine View. William Fjetland's sister, who owned 15% of B & L and had an agreement with to sell her interest for $50,000, tried to take over the business and brought a receivership action against B & L. False rumors were circulated by ill wishers that slag was buried on the Portside property and truckers who brought recyclable material would be required to remove it and that business was falling off. Camille Fjetland had turned to Cross as a legal advisor because he had been one of the attorneys who had represented her husband. Under the increased mental and emotional pressure, she turned both to professional help and she also turned to the use of street drugs some of which she was introduced to by a former employee who is now an officer of Marine View, to give her some relief from the continual building stress. She received no real help for her personal stress problems from any of these sources but during this time she became somewhat chemically dependent and handicapped thereby. Fortunes "curiously" turned very sour for Camille Fjetland and her companies after William Fjetland died and some of that curiosity may be clarified in these proceedings as she became the defenseless woman and widow. She became an easy prey.

26. Finally, in response to the continual pressures and in response clearly to the guidance of Cross, Camille Fjetland agreed to step away from running the businesses for thirty days. Thus on March 2, 1993, in the company of Cross and with others present including Walker, she did go to the Superior Court of Washington in Pierce County with Cross ostensibly for a hearing on a receivership matter. She may have mistakenly believed involved on Neubauer but she actually was invited to the court by Cross on the receivership action of her sister in law, Karen Jones. While there Walker and Cross agreed, to place B & L in receivership (Pierce County cause # 93-2-00494-7) with Joe Esson and Karen Jones appointed as receivers and to bar Camille Fjetland from the business premises for thirty days.

27. Marshall has been commissioner in the Pierce County Superior Court for some years and is an old friend or social acquaintance of Cross. Estate and probate matters are routinely handled by the Pierce County court commissioners and there has

developed what one could call an old boy network and a network of convenience in the handling of these matters. Apparently Commissioner Marshall was not adverse to "bending" the rules for his friend or acquaintance, Cross. Under the circumstances it is alleged and believed that Marshall knew about what was to be presented to him on the bench concerning Camille Fjetland on March 2, 1993, before the time of its presentation and had made up his mind to sign any order thereon presented by Cross or in the alternative had made up his mind to sign any ex-parte order presented by Cross, at least so long as Cross would assure him no harm to himself would result. **28.** Pursuant to a prior agreement with Walker, on March 2, 1993, Cross took Camille Fjetland into the court of Marshall and there upon presented him with a petition and order appointing Joe Esson as the guardian of her property and estate which Marshall did sign immediately and which order was immediately entered. Camille Fjetland, not knowing the nature or consequences of this legal action may have signed the one or more of the papers believing them to give Joe Esson, one of William Fjetland's sons who was then working for her, something akin to a power of attorney to help her run the affairs of her businesses.

29. The statutory notice that is required for personal jurisdiction over an alleged incompetent is as follows:

> RCW 11.88.030 (4)(a) Notice that a guardianship proceeding has been commenced shall be personally served upon the alleged incapacitated person and the guardian ad litem along with a copy of the petition for appointment of a guardian. Such notice shall be served not more than five days alter the petition has been filed.
>
> (b) Notice under this subsection shall include a clear and easily readable statement of the legal rights of the alleged incapacitated person that could be restricted or transferred to a guardian by a guardianship order as well as the right to counsel of choice and to a jury trial on the issue of incapacity. Such notice shall be in substantially the following form and shall be in capital letters, double-spaced, and in a type size not smaller than ten-point type:

IMPORTANT NOTICE
PLEASE READ CAREFULLY

A PETITION TO HAVE A GUARDIAN APPOINTED FOR YOU HAS BEEN FILED IN THE COUNTY SUPERIOR COURT BY . IF A GUARDIAN IS APPOINTED, YOU COULD LOSE ONE OR MORE OF THE FOLLOWING RIGHTS:

(1) TO MARRY OR DIVORCE;

(2) TO VOTE OR HOLD AN ELECTED OFFICE;

(3) TO ENTER INTO A CONTRACT OR MAKE OR REVOKE A WILL;

(4) TO APPOINT SOMEONE TO ACT ON YOUR BEHALF;

(5) TO SUE AND BE SUED OTHER THAN THROUGH A GUARDIAN;

(6) TO POSSESS A LICENSE TO DRIVE;

(7) TO BUY, SELL, OWN, MORTGAGE, OR LEASE PROPERTY;

(8) TO CONSENT TO OR REFUSE MEDICAL TREATMENT;

(9) TO DECIDE WHO SHALL PROVIDE CARE AND ASSISTANCE;

(10) TO MAKE DECISIONS REGARDING SOCIAL ASPECTS OF YOUR LIFE.

UNDER THE LAW, YOU HAVE CERTAIN RIGHTS.

YOU HAVE THE RIGHT TO BE REPRESENTED BY A LAWYER OF YOUR OWN CHOOSING. THE COURT WILL APPOINT A LAWYER TO REPRESENT YOU IF YOU ARE UNABLE TO PAY OR PAYMENT WOULD RESULT IN A SUBSTANTIAL HARDSHIP TO YOU. YOU HAVE THE RIGHT TO ASK FOR A JURY TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN TO HELP YOU. YOU HAVE THE EIGHT TO BE PRESENT IN COURT WHEN THE HEARING IS HELD TO DECIDE WHETHER OR NOT YOU NEED A GUARDIAN.

This notice was never given Camille Fjetland before the Marshall order of March 2, 1993.

30. The petition itself even failed to meet the requirements of the

statute. 11.88.030 (a) requires that the petition set forth the name, age, residence and post office address of the alleged incapacitated person. The petition omitted her age, residence and post office address. The statute requires that the petition set forth the nature of the alleged incapacity in accordance with RCW 11.88.010. No where does the petition allege that Mrs. Fjetland pose "a significant risk of personal harm based upon a demonstrated inability to adequately provide for nutrition, health, housing or physical safety." RCW 11.88.010(a) No where does the petition allege that she is at risk of financial harm based upon a demonstrated inability to adequately manage her property or financial affairs, RCW 11.88.010(b). It merely alleges that "Camille Fjetland is mentally incompetent" a condition many of us feel personally from time to time when faced with life. It merely says that she is "incapable of attending to her personal and financial affairs" which tells us nothing of the nature of her inabilities. Chapter 11.88 RCW gives the court power to appoint guardians for the persons and /or estates of "incapacitated persons", RCW 11.88.010(1). It is this incapacity that must be alleged. Furthermore, neither the petition nor the order described to Mrs. Fjetland what she would be facing with the appointment of a guardian.

31. The guardian was appointed on the same day the petition to appoint the guardian was filed. This violates the requirements of RCW 11.88.040:

> "Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be given by registered or certified mail requesting a return receipt signed by the addressee or an agent appointed by the addressee, or by personal service in the manner provided for services of summons, to...(1) The alleged incapacitated person, or minor, if under fourteen years of age;...."

No notice of hearing was ever filed or given to Mrs. Fjetland.

32. Mrs. Fjetland was not the only person the law required a notice to be given to. RCW 11.88.040 also requires that:

"Before appointing a guardian or a limited guardian, notice of a hearing, to be held not less than ten days after service thereof, shall be served personally to the alleged incapacitated person, if over fourteen years of age, and served upon the guardian ad litem."

No guardian ad litem had been appointed so there was no personal service of the notice of hearing on that person and of course, there was no service of the notice of hearing on Mrs. Fjetland.

33. While Mr. Cross continually signed his name as counsel for Camille Fjetland, he was also the counsel for Joe Esson, the person who petitioned for the appointment of a guardian. Thus he could hardly be considered independent counsel envisioned by RCW 11.88.045 who is charged as follows, (b)

"Counsel for an alleged incapacitated individual shall act as an advocate for the client and shall not substitute counsels own judgment for that of the client on the subject of what may be in the client's best interests. Counsel's role shall be distinct from that of the guardian ad litem, who is expected to promote the best interest of the alleged incapacitated individual, rather than the alleged incapacitated individual's expressed preferences."

Cross continued as "counsel of convenience" representing various parties in the guardianship including Delavergne until he was forced to withdraw in the second half of 1994.

34. RCW 11.88.045(4) requires that:

"In all proceedings for appointment of a guardian or limited guardian, the court must be presented with a written report of a physician licensed to practice under chapter 18.71 or 18.57 RCW or licensed or certified psychologist selected by the guardian ad litem. The physician or psychologist shall have personally examined and interviewed the alleged incapacitated person within thirty days of the report to the court and shall have expertise in the type of disorder or incapacity the alleged incapacitated person is believed to have. The report shall contain the following information and shall be set forth in substantially

the following format:

(a) The name and address of the examining physician or psychologist;

(b) The education and experience of the physician or psychologist pertinent to the case;

(c) The dates of examinations of the alleged incapacitated person;

(d) A summary of the relevant medical, functional, neurological, psychological, or psychiatric history of the alleged incapacitated person known to the examining physician or psychologist;

(e) The findings of the examining physician or psychologist as to the condition of the alleged incapacitated person;

(f) Current medications;

(g) The effect of current medications on the alleged incapacitated person's ability to understand or participate in the guardianship;

(h) Opinions on the specific assistance the alleged incapacitated person needs;

(i) Identification of persons with whom the physician or psychologist has met or spoken regarding the alleged incapacitated person.

The court shall not enter an order appointing a guardian or limited guardian until a medical or psychological report meeting the above requirements is filed." [EMPHASIS ADDED]

Following this direction would have been difficult had it even been attempted. Her regular psychiatrist was not about to support a petition for appointment of a guardian. The other person who was eventually used (Dr. Richard Falk, Ed.D.) had filed a declaration under oath in the Karen Jones case against Mrs. Fjetland for a receivership of B & L (Pierce County Superior Court Cause No. 93-2-00493-7) dated February 11, 1993. This was just twenty one days before the guardianship petition was filed by Cross and the guardian was appointed and Joe Esson, the petitioner, was appointed on Cross's ex-parte order. In the B & L proceeding affidavit of February 11th Falk said: "...she is able to make business decisions and we feel she is competent at this time to run the business and

there is no mental disability that should prevent her from running a business...."

35. RCW 11.88.090 (2) requires that "Upon receipt of a petition for appointment of a guardian or limited guardian, . . . the court shall appoint a guardian ad litem to represent the best interests of the alleged incapacitated person. . . ." (2)(b) further states that "The order appointing the guardian ad litem shall recite the duties set forth in subsection (5) of this section."

First, no guardian ad litem was ever appointed until April 22, 1993. That was 53 days after the petition was filed and the guardian was appointed. That order and the subsequent order of April 23, 1993 that resulted in the appointment of Mack D. Lievense, never set forth the duties in RCW 11.88.090(5). Thus it is not surprising that this proceeding failed to meet the mandate of the statute that required under RCW 11.88.090(5)(d) that:

> "Within forty-five days after notice of commencement of the guardianship proceeding has been served upon the guardian ad litem, and at least ten days before the hearing on the petition, unless an extension or reduction of time has been granted by the court for good cause, the guardian ad litem shall file its report and send a copy to the alleged incapacitated person and his or her spouse, all children not residing with a notified person, those persons described in (d) of this subsection, and persons who have filed a request for special notice pursuant to RCW 11.92.150;" [Emphasis added]

When the court got around to appointing a guardian ad litem, Mr. Lievense proved he could work fast. He filed his report on May 5, 1993, mailed a copy of that report as required on May 5, 1993, filed his request for compensation on May 5, 1993 and presented an order replacing Joe Esson as Guardian with Mr. Delavergne and Mrs. Jones on May 5, 1993 and it was entered on May 5, 1993. No ten day notice of appointment of any guardian was ever given

36. On March 2, 1993, pursuant to prior agreement of Cross, Walker entered an order appointing Joe Esson and Karen Jones as co-receivers of B & L, and barring Camille Fjetland from the premises for thirty (30) days.

37. On March 19, 1993, Walker had a conversation with a representative from Key Bank that led him to follow up a contact he had had with Delavergne. He had lunch with Delavergne on March 20, 1993 and as a result proposed to Cross in a letter of March 23, 1993, a meeting with Delavergne, himself, Cross, Esson and Karen Jones to discuss the control of Camille Fjetland's and B & L businesses.

38. By April 6, 1993, Walker had soured over Esson as a co receiver. He made accusations against Esson in a letter to Cross and suggested that Esson should take care and he further noted that he and Cross had agreed to meet on April 8, 1993, at the court to appoint a third receiver for B & L. They did so and one William Beecher was appointed but may have never served.

39. On April 22, 1993, Cross, now claiming to act as attorney for Camille Fjetland, signed a motion to remove Joe Esson as guardian and replace him with Delavergne. He filed this motion on April 26, 1993.

40. On April 22, 1993, Cross obtained, as Camille Fjetland's attorney, an ex-parte order appointing Diana Kiesel as Guardian Ad litem "to report to the court as to Camille Fjetland's current mental status and her request to change her court appointed guardian." Kiesel declined to serve.

41. On April 23, 1993, Cross obtained, as Camille Fjetland's attorney, and ex-parte order appointing the "next on list of GAL's" (Guardian's Ad Litem) "to be appointed as Guardian Ad Litem to report to the court as soon as practical."

42. On April 23, 1993 Delavergne was appointed as the third receiver of B & L. Apparently this was over the objection of Esson who did not sign a resignation as receiver until May 3, 1993. Cross prepared Esson's resignation and he prepared the order of April 22, 1993, appointing Delavergne as the third receiver to manage the company.

43. On May 3, 1993, on pleading prepared by Cross, Joe Esson resigned as Guardian for Camille Fjetland and his resignation was filed on May 5th.

44. On May 5, 1993, an order was presented by Mack Lievense, apparently approved by Cross, replacing Joe Esson as Guardian with

Delavergne and Mrs. Jones on May 5, 1993 and it was entered on May 5, 1993. The order as proposed required each guardian to post $100,000 bonds but this was reduced in the order signed to $20,000 bonds which Karen Jones never filed. Karen Jones finally declined to serve on June 16, 1993. Delavergne filed his bond on May 27, 1993 and signed his oath as guardian on May 15, 1993 which was filed on June 16, 1993 when letters of guardianship were issued to him which letters were also pursuant to another Cross ex-parte order entered that day providing that he would be the sole guardian of Camille Fjetlands business and person.

45. On May 13, 1993, an order was approved in the B & L receivership stipulating to a settlement and the discharge of the receiver by Cross and Walker and noting that Camille Fjetland appeared pro se and by her guardian Delavergne and her attorney Cross. Both Cross and Walker claimed to represent B & L while Walker represented Karen Jones. The order was entered on May 24, 1993. It apparently approved a settlement agreement signed on May 18, 1993, and filed on May 24, 1993. The stipulated settlement provided for the payment of $10,000 in attorney fees to Vandeberg & Johnson, Walker's firm by B & L. It also apparently tried to provide a statement that Portside was always equitable owned by B & L but this was crossed out. Underneath that was a hand written notation by someone that "B & L shall purchase E.E.I (or T) for $1.00." There is no clear indication who approved this and Camille Fjetland did not approve this. Portside was never a party to that action.

46. On May 18, 1993, Karen Jones gave Delavergne a power of attorney to renegotiate the bank loans to Key Bank and to have full authority and control over the corporate bank accounts of B & L.

47. On May 27, 1993, Cross obtained an ex-parte order in the Guardianship proceeding allowing Delavergne "to make such personal guarantees as are required to protect the corporate interests of Camille Fjetland and her personal assets..." and authorizing him "to take a security position secondary to the loan positions ..." on her assets for his own security. He was also authorized "to lease capital equipment for the development of the B & l assets in his own name and lease said equipment to ..." B & l on a rental basis that will

reimburse him for his full leasing costs.

48. On June 16, 1993, on Cross pleading paper, Karen Jones formally declined to serve as the guardian of Camille Fjetland and that was filed on the same date. Delavergne officially became Camille Fjetland's guardian on that date according to the Guardianship proceedings. He had apparently been operating her businesses since about May 1st.

49. On July 23, 1993, Marine View prepared for parties presently unknown but believe to include Key Bank and perhaps Lone Star, a projected income statement for its future operations. In that statement it assumed that it would be leasing the facilities of B & L and possibly Fjetland.

50. On August 10, 1993, Cross sought and received an ex-parte order for the reappointment of Mack Lievense as Guardian Ad Litem to review a proposed lease of the B & L properties to Marine View. that were already under lease to Portside. Lievense finally sent a letter on September 21, 1993, to Cross indicating that he refused to serve because he could not approve of the lease of the Ward's estate to the Guardian's controlled company. This was never reported or shown to the court.

51. No lease to Marine View was actually approved by the court until December 1993. On December 3 or 5, 1994 an ex-parte order was presented by Cross to a court commissioner approving the lease of the B & L property already leased to Portside, to Marine View based upon a petition of Cross. However a long term the lease was actually prepared much earlier and dated September 9, 1993 and bears the signatures of Delavergne both on behalf of B & L and Marine View. On an attached acknowledgement page, the lease bears a signature that purports to be that of Camille Fjetland under a typed notation that says "That I Camille Fjetland have reviewed this agreement and consider it fair and ask the Guardian Ad Litem to review it on my behalf." Camille Fjetland denies approving of the actual lease by B & L to Marine View and it is clear that the aforesaid typed comment was typed or printed by a different machine than the one that produced the lease.

52. Part of the B & L property already leased to Portside was also leased (without any court approval) on November 1, 1993, by

Delavergne acting for B & L to Tucci for five years for a rental of $1,800. a month and calling for $64,800 of the rental payments (36 months) to be paid in advance. The prepayment of rentals was made and it appears to have formed a part of the $116,000 that Delavergne "borrowed" from B & L on a series of no interest bearing loans to be paid back with no repayment schedule and which money he then "loaned" (invested in) his company, Marine View, in 1993. Apparently Marine View also collected the receivables of Portside or Delavergne put commingled them with B & L money and also used them to pay for the underlying security interest on the property with the Key Bank and other costs of the property. Delavergne apparently operated the mining business under the Portside until Delavergne finally transferred the mining permit to Marine View, possibly in 1994.

53. Tucci had an option to renew the B & L lease for an additional five or ten year period but had no obligation to rent it for that period of time. Tucci then turned around and rented most of its the same space in the Portside leased property at 1621 Marine View Drive, in Tacoma, Washington, to Lone Star. At the same time Lone Star rented property at 3601 Tailor Way, in Tacoma, Washington to Tucci. Both leases were for ten years with five year renewal options and formed further parts of the conspiracy to put Portside out of business. While the exact dates and terms of those leases are presently unknown, memoranda of them were signed by Tucci on November 1, 1993 and Lone Star on December 23, 1993, and those memoranda were recorded in Pierce County on December 28, 1993 under recording numbers 9312280265 and 9312280266.

54. Delavergne and Marine View acting in concert with others herein and carrying out their wishes and desires and plans in the conspiracies alleged herein have taken over all operations of Portside, have taken its files, equipment and assets, its bank accounts and has put it out of business totally destroying it as a competitor in the surface mining and recycling business including furnishing gravel and fill for the highway contracts mentioned above to the damage to Portside in excess of twenty million dollars and perhaps as much as thirty million dollars, to be more particularly shown in these proceedings.

55. Throughout this period of time none of the attorneys, and none of the other participants, showed any concern over the actual welfare of Camille Fjetland. They treated her with contempt, almost as if they expected her to come out of these proceedings as a confused, permanently impaired, financially destitute bag lady. They did everything in their power to avoid supporting her health and self confidence. During this period of time both Cross and Delavergne, in carrying out their parts of the conspiracies, from their actions and omissions, had created the strongest obligations to act in a caring and fiduciary manner to Camille Fjetland. Yet they did nothing to help her meet any of her personal health problems. They relied upon Camille Fjetland's confusion and emotional stress to control her and cause her further damage, mental anguish, moral degradation, financial losses, as well as further losses of credit and losses to her reputation and she could be considered damaged in a great personal amount for another twenty five million dollars.

56. Before William Fjetland died, Tucci expressed an interest in buying the B & l - Fjetland tide flats properties. In response to this interest the Fjetlands gave them (Tom Tucci) a copy of the latest appraisal from John Mills and a copy of the Department of Natural Resources mining permit and a copy of the updated reclamation plan and engineering plans and business plans for Fjetland future use of the properties and the plans for annexation and zoning. Tucci never responded further after this material was furnished.

57. Later when Fjetland companies were bidding on some contracts to provide storage space for a particular clay product to being barged in to Tacoma from Seattle to be used for clean up contract work on our other parcel of land Ames Construction was looking for a place to relocate 400,000 cubic yards of clay from the West Point (Discovery Park area) sewer treatment plant expansion in Seattle. The clay was to be barged to the Loan Star dock in Tacoma. Camille Fjetland proposed to store about 200,000 yards of the 400,000 yards on the Portside property at 50 cents to a dollar a yard because it met the environmental specifications for forming an cap over super fund sites that met state standards. Since another corporation that the Fjetland's owned, Executive Bark, owned a

super fund site Camille Fjetland could see the future use of this material on that site. The material did not include any hazardous waste to Camille Fjetland's knowledge. Tucci looked at the property where the excavated clay was to be stored by Fjetlands. Tucci was doing the bid for moving the dirt off the barge site at Tacoma to where it would be stored. Tucci refused to do a bid on moving any of the material to the Fjetland property. The excuse was the Fjetlands and their companies were involved in too much hazardous waste litigation. Prior to this they had worked with William Fjetland (primarily through Jim Tucci) on truck rentals on various jobs around the county but after this the Fjetland companies received no more business from Tucci.

58. Tucci made a contract with Lone Star on operating an multi million dollar asphalt burner plant facility on Lone Star's tide flats property probably in recognition of the large volume of upcoming road work in the Tacoma Flats area. It is believed that as part of this agreement Tucci was required to purchase a minimum of a million tons of gravel a year from Lone Star. The placement of the Asphalt plant on the Lone Star plant also meant that there was a need for new city land use approval for this use of Lone Star's property which appears to have been obtained within a year of request. It also meant that Lone Star had to locate a new place to park its fleet of trucks because of the plant expansion.

59. Portside was negotiating with Delavergne on behalf of Lone Star to allow Lone Star to park on its leased property for $10,000.00 a month. The property was the closest place available to their tide flats pant except for some Port property which is for lease across the street. The Port's lease prices are considerably higher. Use of Portside's facility also allowed Lone Star to save much time on the turn around on their trucks because it allowed them to wash their trucks out on the Portside property, pour their waste concrete out on Portside property where it would be placed in molds and when hardened the waste would form "ecology" blocks about 4'x2'x2' that could then be sold for various uses such as for retaining walls. Lone Star, through Delavergne promoted these as an additional benefit to use of Portside property. Marine View is presently using part of the property for just these purposes.

60. Delavergne was Lone Star's agent for all actions involved against Portside in putting it out of business and represented the interests of both Tucci and Lone Star to all of these ends in taking over the property leased to Portside and putting Lone Star's competitor out of business. Lone Star's plan to remove Portside as a competitor long predated the guardianship and formed a basis of the proposals of Delavergne for Loan Star doing business with Camille Fjetland's companies but which Camille Fjetland had not agreed upon.

61. While Delavergne and his employees and Marine View were stripping Camille Fjetland, Portside and B & L of cash and property, Delavergne made no serious effort to pay off Camille Fjetland's debts and indeed would allow months to go by without any payment on debts to the destruction of Camille Fjetland's credit.

FACTS SUPPORTING CIVIL RIGHTS CLAIMS

62. The Superior Court in Pierce County never gained jurisdiction in the guardianship matter to appoint Joe Esson as a guardian and thus initiate the guardianship of Camille Fjetland because the notice of the proceeding, as required by RCW 11.88.030(4)(b) was never given.

63. The Superior Court in Pierce County never gained jurisdiction in the guardianship matter to appoint Joe Esson as a guardian and thus initiate the guardianship of Camille Fjetland because the notice of hearing as required by RCW 11.88.040 was never given.

64. The Superior Court in Pierce County never gained jurisdiction to enter an order finding that a guardian was required for Mrs. Fjetland on March 2, 1993 or at any time thereafter because no guardian ad litem had ever been appointed prior to granting the initial petition.

65. The Superior Court in Pierce County never obtained jurisdiction to take any actions above alleged in the guardianship matter to appoint Joe Esson as a guardian and thus initiate the guardianship of Camille Fjetland because it did so prior to any report of any guardian ad litem.

66. The Superior Court in Pierce County never gained jurisdiction to enter an order finding that a guardian was required for Mrs. Fjetland on March 2, 1993 or at any time thereafter, because no

service of any report of the guardian ad litem was made as required by statute prior to the appointment of Joe Esson as guardian.

67. Due process of law under the 14th Amendment to the U.S. Constitution requires at a minimum that the deprivation of life, liberty or property by adjudication be preceded by notice and an opportunity for a hearing appropriate to the nature of the case. This was not accorded to Camille Fjetland.

68. Under the amendments to the United States Constitution especially under the due process clause of the fourteenth amendment, Camille Fjetland was entitled to counsel in the guardianship proceedings before appointment of counsel. through the duplicitous and deceptive acts of Cross she was deprived of counsel in these proceedings.

69. Due process prohibits any exercise of judicial power substantially affecting a defendant's rights without notice. Such notice must apprise the affected individual of what she faces and permit her adequate preparation for any impending hearing, Extra-official or casual notice, or a hearing granted as a matter of favor or discretion, cannot be deemed a substantial substitute for the due process of law that the 14th Amendment requires. The appointment by the Superior Court of an administrator of an estate of Camille Fjetland and a guardian of her person, without notice to her is without jurisdiction and is wholly void as against her; and all acts of the administrator, whether approved by the court or not, are equally void, as violation of the requirements of due process of law.

70. The Statutory requirement as to the giving of notice is deemed to be mandatory under the due process clause of the fourteenth amendment provided it provides sufficient notice to meet the amendments requirements and the failure to comply with these statutory requirements violates that amendment.

71. Predetermination of a ruling prior to giving the parties an opportunity to be heard also violates the due process clause of the fourteenth amendment and is without the jurisdiction of the courts.

72. For the reasons aforesaid, the Commissioner Marshall lacked jurisdiction over the person and subject matter of the guardianship of Camille Fjetland and is not protected in this action by any judicial

immunity.

73. Camille Fjetland is a person within two protected classes under the equal protection clauses of the fourteenth amendment and the civil rights acts passed by congress to enforce those rights. She is both a female and she has been handicapped by chemical dependency.

V FIRST CAUSE OF ACTION - CIVIL RIGHTS

74. Adopting the facts set forth in paragraphs 1 through 73, plaintiff alleges that Marshall, Walker, Cross joined by Delavergne and perhaps others presently unknown, conspired to and did violate and deprive Camille Fjetland of her rights, privileges and immunities secured by the constitution of the United States and the laws thereof and are jointly and severally liable under 42 U.S.C.A. (1983 to Camille Fjetland in the sum of Twenty Five Million Dollars ($25,000,000.00) or such other sum as proved at trial and the redress of her grievances.

VI SECOND CAUSE OF ACTION - CIVIL RIGHTS

75. Adopting the facts set forth in paragraphs 1 through 73, plaintiff alleges that Marshall, Walker, Cross joined by Delavergne and perhaps others presently unknown conspired to and did violate and deprive Camille Fjetland of her rights, privileges and immunities secured by the constitution of the United States and the laws thereof and did so for the purpose of impeding, hindering obstructing or defeating in any manner the due course of justice in the State of Washington with the intent to deny her the equal protection of the laws and are jointly and severally liable under 42 U.S.C.A. (1985 to Camille Fjetland in the sum of Twenty Five Million Dollars ($25,000,000.00) or such other sum as proved at trial and the redress of her grievances.

VII THIRD CAUSE OF ACTION - ANTI-TRUST

76. Adopting the facts set forth in paragraphs 1 through 72, plaintiff alleges that Lone Star, Marine View, Tucci, Walker, Cross, and Delavergne and perhaps others whose identities are presently unknown, conspired to and did violate 15 U.S.C.A. §1 by making contracts and combinations and conspiring to restrain trade or commerce among the several states by taking Portside's property and putting it out of business in 1993 and are liable to Portside Recycling

under 15 U.S.C.A. (15 to Portside in the sum of Thirty Million Dollars or such other sum as shall be proved at time of trial which sum shall be trebled and to which shall be added reasonable attorney fees.

VIII FOURTH CAUSE OF ACTION - RICO

77. Adopting the facts set forth in paragraphs 1 through 73, plaintiffs allege that Delavergne, and perhaps others named above and others presently unknown having received income from a pattern of racketeering activity invested that income or caused it to be invested in Marine View in violation of 18 U.S.C. §1962(a).

78. The activities involved the receipt of property and services in excess of $1,500.00 involving separate account receivables, many separate pieces of property including trucks and equipment, bank accounts and other things of value from a variety of sources including Camille Fjetland, B & L, and Portside, in violation of RCW 9A56.010(1)(a) and (b), and invested them into Marine View. Such acts constitute numerous violations of the criminal laws of the State of Washington against Robbery (theft) and amount to felonies punishable by imprisonment for more than one year.

79. The total amount of this claim for injuries to the Plaintiffs property and business is considerable but must await a full accounting as the properties and many of the records are still under the care and control of Delavergne and Marine View but it is believed that both Portside and Camille Fjetland have claims hereunder and these losses should be trebled under 18 U.S.C §1964.

IX FIFTH CAUSE OF ACTION - RICO

80. Adopting the facts set forth in paragraphs 1 through 73, and paragraphs 78 and 79 plaintiffs allege that Delavergne, and perhaps others named above and others presently unknown, through a pattern of racketeering activity did acquire an maintain an interest in and controlled B & L, Portside, Executive Bark, and Marine View in violation of 18 U.S.C. (1962(b).

X SIXTH CAUSE OF ACTION - RICO

81. Adopting the facts set forth in paragraphs 1 through 73, and paragraphs 78 and 79 plaintiffs allege that Delavergne, and perhaps others named above, through a pattern of racketeering conduct participated in the activities of Marine View, Portside and B & L that

were engaged in interstate commerce in violation of 18 U.S.C. (1962(c).

XI SEVENTH CAUSE OF ACTION - RICO

82. Adopting the facts set forth in paragraphs 1 through 81, plaintiffs allege that Delavergne and Cross and perhaps others named above and others presently unknown conspired to violate subsections (a)(b) and (c) of 18 U.S.C. (1962 in violation of 18 U.S.C. (1962(d).

XII EIGHTH CAUSE OF ACTION - CRIMINAL PROFITEERING

83. Adopting the facts set forth in paragraphs 1 through 82, plaintiffs allege that Marine View, Delavergne and Cross and perhaps others named above and others presently unknown conducted a pattern of criminal profiteering activity and did conspire to conduct a pattern of criminal activity, which activity included more than three predicate acts, including the theft of lease property to Portside, the theft of numerous receivables of Portside, theft of large sums from B & L, the theft of numerous items of property including equipment, trucks and parts, from Portside, B & L and Camille Fjetland with the intent to convert many of them to the uses and purposes of Marine View, Delavergne and in at least one case, Cross, through a common set of operational schemes, all in violation of Chapter 9A.82 RCW.

84. Under Chapter 9A.82 RCW Plaintiffs Camille Fjetland and Portside are entitled to be compensated both for the value of the property lost and for their injuries, which sums shall be trebled and they are entitled to their reasonable attorney fees all of which shall be made clearer herein but could include actual damages of to up to thirty million dollars for Portside before the damages are multiplied and up to twenty five million dollars for Camille Fjetland considering not only her property losses but her personal injuries, pain and suffering and public humiliation, before her actual damages are trebled.

XIII NINTH CAUSE OF ACTION - MALPRACTICE

85. Adopting their allegations in Paragraphs 1 through 84 above, Plaintiffs further assert that Cross has represented both plaintiffs and also he has represented B & L, Executive Bark, William Fjetland, the guardians appointed the guardianship of Camille Fjetland aforesaid,

Delavergne and Joe Esson and continued to represent these people in repeated conflict of interest and failed to perform his fiduciary duties to the plaintiffs through this repeated conflict of interest in breach of his contracts to represent these plaintiffs, abandoning their rights, entering orders in direct conflict with their rights, failing to properly advise them and accepting payment for supposedly representing them from another person whose designs were in conflict with the rights of the plaintiffs, which payment was known to be from the personal property of defendant Camille Fjetland, commingling the affairs of the various business of the plaintiff Fjetland so as to expose her and them to increased liability from the IRS, allowing Executive Bark to be administratively dissolved and thus raising the possibility of Fjetland having to become the owner of a super fund site with a million dollar or more of personal exposure, all causing the plaintiffs other grievous damages described herein.

XIXENTH CAUSE OF ACTION - BREACH OF FIDUCIARY DUTY

86. Adopting paragraphs 1 through 84 above, Camille Fjetland further alleges that Delavergne has owed to her a fiduciary duty to protect her welfare and her property which he has for all general intents and purposes, utterly and thoroughly ignored and abandoned for his own profit causing her the damages aforesaid.

XV PRAYERS FOR RELIEF

WHEREFORE PLAINTIFFS PRAY FOR RELIEF AS FOLLOWS:

PORTSIDE PRAYS AS FOLLOWS:

A. Under her first cause of action she prays for relief against Marshall and his marital community, Cross and his marital community, Delavergne and his marital community, and Walker and his marital community by way of judgment jointly and severally for $25,000,000.00 or such other sums as shall be found to be her losses allowed for recovery under 15 U.S.C.A. (1983 together with any allowable attorney fees there under together with her costs and expenses herein incurred and such further relief as may be just in the premises.

A. Under her second cause of action she prays for relief against Marshall and his marital community, Cross and his marital community, Delavergne and his marital community, and Walker and his marital community by way of judgment jointly and severally for $25,000,000.00 or such other sums as shall be found to be her losses allowed for recovery under 15 U.S.C.A. (1985 together with any allowable attorney fees there under together with her costs and expenses herein incurred and such further relief as may be just in the premises.

B. Under the third cause of action Portside prays for judgment of $30,000,000.00 or such other sum as shall have been proved to be its loss, which should shall be trebled, and to which sum shall be added reasonable attorney fees and its costs herein, and for the judgment thereon to run jointly and severally against Lone Star, Tucci, Cross and his marital community, Delavergne and his marital community and Walker and his marital community.

C. Under its fourth cause of action Portside prays for judgment in the sum of $30,000,000.00 or such other sum as shall have been proved to be its loss, which damages shall be trebled, and to which reasonable attorney fees shall be added and its costs herein to run jointly and severally against Lone Star, Tucci, Cross and his marital community, and Delavergne and his marital community.

D. Under its fifth cause of action Portside prays for judgment in the sum of $30,000,000.00 or such other sum as shall have been proved to be its loss, which damages shall be trebled, and to which reasonable attorney fees shall be added and its costs herein to run jointly and severally against Lone Star, Tucci, Cross and his marital community, and Delavergne and his marital community.

E. Under its sixth cause of action Portside prays for judgment in the sum of $30,000,000.00 or such other sum as shall have been proved to be its loss, which damages shall be trebled, and to which reasonable attorney fees shall be added and its costs herein to run jointly and severally against Lone

Star, Tucci, Cross and his marital community, and Delavergne and his marital community.

F. Under its seventh cause of action Portside prays for judgment in the sum of $30,000,000.00 or such other sum as shall have been proved to be its loss, which damages shall be trebled, and to which reasonable attorney fees shall be added and its costs herein to run jointly and severally against Lone Star, Tucci, Cross and his marital community, and Delavergne and his marital community.

G. Under its eighth cause of action Portside prays for judgment in the sum of $30,000,000.00 or such other sum as shall have been proved to be its loss, which damages shall be trebled, and to which reasonable attorney fees shall be added and its costs herein to run jointly and severally against Lone Star, Tucci, Cross and his marital community, and Delavergne and his marital community.

H. Under its ninth cause of action Portside prays for judgment in the sum of $30,000,000.00 or such other sum as shall have been proved to be its loss, its costs herein to run against Cross and his marital community.

BOTH PLAINTIFFS PRAY:

I. That the court shall consider and give defendants any credit they may be entitled to for any overlapping damage claims, as Plaintiffs seek only recoveries allowed in the aggregate that recompense their losses together with any additional damages allowed by the statutes concerned. Thus if the same damage is allowed to be multiplied by three under two different statutes, or three different statutes then it should not be multiplied by more than five or seven respectively if such be allowable under law.

January 13, 1995

/S/ Edward D. Campbell